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ABSTRACT

This handbook provides state legal regulations for Washington State special education services and programs for students with disabilities. It includes requirements that address the following areas: (1) general authority and purpose of the requirements; (2) students' rights; (3) general definitions; (4) child find; (5) evaluation procedures; (6) eligibility criteria; (7) Individualized Education Program; (8) service delivery options; (9) evaluation of progress and reevaluation; (10) service delivery standards; (11) staff qualifications; (12) school district placements; (13) private school placements; (14) procedural safeguards; (15) notice requirements; (16) surrogate parents; (17) mediation; (18) citizen complaint process; (19) hearings; (20) disciplinary exclusion; (21) aversive interventions; (22) student records; (23) methods of ensuring services; (24) program monitoring; (25) personnel development; (26) participation in assessment and reporting results; (27) funding procedures; and (28) the school-based improvement plan. For each requirement, the statutory authority in federal and state law is noted. The handbook also includes an explanatory statement that identifies and discusses changes made in the state regulations. (CR)

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Special Education

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State of Washington

Rules for the Provision of Special Education to Special Education Students

Chapter 392-172 WAC

EC308404

Dr. Terry Bergeson
State Superintendent of
Public Instruction

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
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State of Washington

RULES FOR THE PROVISION OF SPECIAL EDUCATION TO SPECIAL EDUCATION STUDENTS

Chapter 392-172 WAC

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April 2000

State of Washington

RULES FOR THE PROVISION OF SPECIAL EDUCATION TO SPECIAL EDUCATION STUDENTS

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392-172-060	Definition—Transition services. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-060, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-062	Definition of terms related to transition services. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-062, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-110	Communication disordered students—Evaluation. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-110, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-112	Medical evaluation. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-112, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-152	Summary analysis of evaluation data. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-152, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-154	School district or other public agency decision on eligibility. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-154, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-168	Required student participation—Transition. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-168, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-178	Preschool services. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-178, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-184	Reevaluation—Notice requirement. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-184, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-206	Facilities. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-206, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-214	Administration of medication. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-214, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-216	Choice and running start programs. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-216, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-228	Out-of-state agencies. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-228, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-234	School district or other public agency responsibility for private school special education students. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-234, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-236	Determination of needs, numbers of students and types of services. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-236, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-320	Authority. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-320, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-322	Purpose. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-322, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-340	Complainant right to appeal. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-340, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-346	Appeal to the secretary of education in complaints against the superintendent of public instruction. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-346, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-358	Prospective application to amendments in *Washington Administrative Code* affecting hearings. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-358, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.

392-172-372	Disciplinary exclusion—Procedures, continuing district or other public agency responsibility. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-372, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-374	Disciplinary exclusion—Determination of disability relatedness and/or appropriateness of program. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-374, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-376	Disciplinary exclusion—Definition significant change of placement. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-376, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-378	Disciplinary exclusion—Determination of what constitutes a pattern of exclusion. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-378, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-380	Emergency exclusion—Dangerous students. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-380, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-382	Disciplinary exclusion—Bringing a firearm to school. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-382, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-398	Aversive therapy—Parent complaint process. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-398, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-554	Scope of system. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-554, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-556	Establishment of a comprehensive system of personnel development advisory committee. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-556, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-558	Annual needs assessment. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-558, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-560	Data system on personnel and personnel development. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-560, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-562	Other sources of annual needs assessment data. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-562, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-564	Report of current and projected personnel needs. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-564, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-566	Administration of continuing education. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-566, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-568	Personnel development plan. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-568, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-570	Provision of technical assistance. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-570, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-592	Records related to grant funds. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-592, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.
392-172-594	Program coordination. [Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-594, filed 10/11/95, effective 11/11/95.] Repealed by 99-24-137, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq.

GENERAL AUTHORITY AND PURPOSE

WAC 392-172-010 Authority. The state authority for this chapter is RCW 28A.155.090(7). This authority enables the superintendent of public instruction to promulgate rules and regulations to implement chapter 28A.155 RCW. This authority is supplemented by RCW 28A.300.070 which authorizes the superintendent of public instruction to receive federal funds in accordance with the provisions of federal law. Federal authority for this chapter is 20 USC 1400 et seq., the Individuals with Disabilities Education Act.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-010, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-010, filed 10/11/95, effective 11/11/95.]

WAC 392-172-020 Purposes. (1) The purposes of this chapter are to:

(a) Implement chapter 28A.155 RCW consistent with the Individuals with Disabilities Education Act, 20 United States Code section 1400 et seq.;

(b) Ensure that all special education students as defined in this chapter have available a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living;

(c) Ensure that the rights of special education students and their parents are protected;

(d) Assist school districts and other public agencies to provide special education and related services; and

(e) Assess and ensure effectiveness of the public agencies responsible for providing special education pursuant to chapter 28A.155 RCW, including state residential school programs which are established and operated pursuant to RCW 28A.190.020 et seq., RCW 13.04.145 and chapter 72.40 RCW.

(2) School districts and other public agencies must be aware that there are additional federal and state civil rights regulations (29 US Code 764, RCW 49.60.030, 43 USC 12101 et seq.) that apply to students who have a disability regardless of the student's eligibility for special education and related services. If a student has a physical, sensory, or mental impairment which substantially limits one or more major life activities, the district or other public agency has an obligation to provide that student appropriate educational services. Such services must be designed to meet the needs of the student with a disability to the same extent the needs of students without disabilities are met. A school district and other public agency's obligation to provide appropriate educational services to meet the needs of a student who has a disability exists separate and apart from the obligation to provide a free appropriate public education to a student who qualifies for special education and any necessary related services under these regulations.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-020, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-020, filed 10/11/95, effective 11/11/95.]

STUDENT'S RIGHTS—GENERAL

WAC 392-172-030 Students' rights to special education programs. (1) Each school district or other public agency shall provide every special education student between the age of three and twenty-one years, a free appropriate public education program, including special education for students who have been suspended or expelled from school. A free appropriate public education is also available to any eligible student even though the student is advancing from grade to grade. The right to special education for eligible students commences on their third birthday with an individualized education program (IEP) in effect by that date. If an eligible student's third birthday occurs during the summer, the student's individualized education program team shall determine the date when services under the individualized education program will begin.

(2) School districts or other public agencies may provide special education and related services to students with a disability who meet the eligibility criteria under WAC 392-172-114(1) in the birth through two years age group. If a school district or other public agency provides an education to any student who is not disabled in the birth through two years age group, the district or other public agency shall make any required special education and related services available pursuant to this chapter to all its special education students of the same age.

(3) Any student referred for special education and related services shall qualify pursuant to eligibility criteria set forth in this chapter.

(4) A special education student shall remain eligible for special education and any necessary related services until one of the following occurs:

(a) A group of qualified professionals and the parent of the student, based on a reevaluation determines the student is no longer in need of special education; (In this case, while a disability may continue, and individual accommodations in the general education classroom may be necessary for educational benefit, such services would not represent special education services as defined in this chapter.) or

(b) The special education student has met high school graduation requirements established by the school district or other public agency pursuant to rules of the state board of education, and the student has graduated from high school with a regular high school diploma. Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with WAC 392-172-302; or

(c) The special education student has reached age twenty-one. The student whose twenty-first birthday occurs on or before August 31 would no longer be eligible for special education. The student whose twenty-first birthday occurs after August 31, shall continue to be eligible for special education and any necessary related services for the remainder of the school year.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-030, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-030, filed 10/11/95, effective 11/11/95.]

STUDENTS—GENERAL—DEFINITIONS

WAC 392-172-035 Definitions of "free appropriate public education," "adult student," "special education student," "parent," and "public agency." As used in this chapter:

(1) "Free appropriate public education" or FAPE means special education and related services which:

(a) Are provided at public expense, under local school district or other public agency supervision and direction, and without charge to parents;

(b) Meet the standards of the state educational agency and the state board of education, including the requirements of this chapter;

(c) Include preschool, elementary school, or secondary school education in the state; and

(d) Are provided in conformance with individualized education program (IEP) requirements of this chapter.

(2) "Special education student" means:

(a) Any student, enrolled in school or not, (i) who has been identified as having a disability, (ii) whose disability adversely affects the student's educational performance, (iii) and whose unique needs cannot be addressed exclusively through education in general education classes with or without individual accommodations and is determined to be eligible for special education services; or

(b) A student under the age of twenty-one who resides in a residential school serving students with a disability in accordance with RCW 28A.190.020 et seq., 13.04.145 and chapter 72.40 RCW; who also qualifies pursuant to (a) of this subsection.

(3) If it is determined through an appropriate evaluation that a student has one of the disabilities identified in WAC 392-172-114 through 392-172-148, but only needs a related service and not specially designed instruction, the student is not a special education student under this chapter.

(4) "Adult student" means a special education student who is eighteen years of age or older and who has not been judged incapacitated by a court of law. A student shall assume and be entitled to exercise all rights, duties and responsibilities otherwise granted to parents by this chapter upon attaining the age of eighteen consistent with WAC 392-172-309. The adult student shall retain and be entitled to exercise the same until he or she has been judged incapable of exercising these rights by a court of law.

(5) "Parent" means a natural or adoptive parent, a guardian, an adult person acting as a parent, or a surrogate parent who has been appointed in accordance with WAC 392-172-308. The term includes a person acting in the place of a parent, such as a grandparent or stepparent with whom a special education student lives, as well as persons who are legally responsible for the student's welfare. The term does not include the state if the special education student is a ward of the state. It does include a foster parent if appointed as a surrogate parent.

(6) As used in this chapter, "public agency" means:

(a) Each public school district in the state;

(b) Each educational service district that provides special education or related services to one or more students with a disability;

(c) Each state operated program; and

(d) Each public organization or entity, including other political subdivisions of the state providing special education and/or related services to one or more special education students regardless of whether the organization or entity receives funds under the Individuals with Disabilities Education Act.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-035, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-035, filed 10/11/95, effective 11/11/95.]

WAC 392-172-040 Definitions of "evaluation," "reevaluation," "consent," "day" and "native language." As used in this chapter:

(1) "Evaluation" means procedures used to determine:

(a) Whether a student is disabled;

(b) Whether the disability adversely affects educational performance; and

(c) The nature and extent of the student's need for specially designed instruction and any necessary related services.

(2) "Reevaluation" means procedures used to determine the special education student's continuing eligibility and need for special education and related services consistent with WAC 392-172-182 through 392-172-190. Reevaluation shall also be used to determine the appropriateness of the services being provided to the special education student.

(3) "Consent" means that the parent or adult student:

(a) Has been fully informed of all information relevant to the activity for which consent is sought in his or her native language or other mode of communication;

(b) Understands and agrees in writing to the activity for which consent is sought, and the consent describes the activity and lists any records which will be released and to whom; and

(c) Understands that the granting of consent is voluntary and may be revoked at any time.

If a parent revokes consent, that revocation is not retroactive (it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(4) "Day" means calendar day unless otherwise indicated as business day or school day. Business day means Monday through Friday, except for federal and state holidays, unless those holidays are specifically included in the designation of a business day in this chapter. School day means any day, including a partial day, that students are in attendance at school for instructional purposes.

(5) "Native language" means:

(a) For an individual of limited English proficiency, the language normally used by that individual, or in the case of a student, the language normally used by the parents of the student. In all direct contact with a student, including evaluation, native language means the language normally used by the child in the home or learning environment.

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, braille, or oral communication).

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-040, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-040, filed 10/11/95, effective 11/11/95.]

WAC 392-172-045 Definition of "special education" and other terms. (1) As used in this chapter "special education" means specially designed instruction provided to an eligible student as defined in WAC 392-172-035 (2) and (3). Specially designed instruction as defined in subsection (4)(a) of this section shall be provided at no cost to the parents, in conformance with the student's IEP, and designed to meet the unique needs of the student. Specially designed instruction includes instruction conducted in the classrooms, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.

(2) The term does not include individual accommodations within general education that alone would be sufficient and effective to meet the learning needs of the student; nor does it include the educational services necessary to meet the needs of those students identified under WAC 392-172-020(2).

(3) Travel training, vocational training, speech and language services, physical and occupational therapy, orientation and mobility instruction, behavioral intervention instruction, transition services, and audiological services are considered special education under this chapter if they are provided as specially designed instruction as defined in subsection (4) of this section. They are considered related services under WAC 392-172-055 if they are required to assist a special education student to benefit from special education, and not provided as specially designed instruction.

(4) The terms used in this section are defined as follows:

(a) "Specially designed instruction" means organized and planned instructional activities which adapt, as appropriate, to the needs of eligible students under this chapter, the content, methodology or delivery of instruction:

(i) To address the unique needs that result from the student's disability;

(ii) To ensure access of the student to the general curriculum so that the student can meet the educational standards of the school district or other public agency that apply to all students; and

(iii) Be provided by appropriately qualified special education certificated staff, or designed and supervised by this staff and carried out by general education certificated personnel or trained classified staff pursuant to a properly formulated IEP consistent with WAC 392-172-160 (1)(c), so that the needs of the student and services provided to the student will be clear to the parents and other IEP service providers. Student progress must be monitored and evaluated by special education certificated staff.

(b) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as part of the general education program.

(c) "Audiology" means the provision of habilitative instruction related to a hearing impairment.

(d) "Behavioral intervention instruction" means providing instruction which addresses student behavior that impedes involvement and/or progress in the general curriculum.

(e) "Occupational therapy" is instruction designed to improve, develop or restore functions impaired or lost through illness, injury, or deprivation, or improve ability to perform tasks for independent function if functions are impaired or lost.

(f) "Orientation and mobility instruction" means the provision of training/instruction in orientation and mobility for students who are visually impaired, including travel training.

(g) "Physical education" means:

(i) The development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance, and individual and group games and sport (including intramural and lifetime sports); and

(ii) Special physical education, adapted physical education, movement education, and motor development.

(h) "Physical therapy" means developing or restoring motor function and maintaining appropriate performance commensurate with the student's unique needs.

(i) "Speech and language services" means the provision of instruction for the habilitation of communication disorders.

(j) "Transition services" means a coordinated set of activities for a special education student that:

(i) Is designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(ii) Is based on the individual student's needs, taking into account the student's preferences and interests; and

(iii) Includes:

(A) Specially designed instruction;

(B) Related services;

(C) Community experiences;

(D) The development of employment and other post-school adult living objectives; and

(E) If appropriate, acquisition of daily living skills and functional vocational evaluation.

(k) "Travel training" means providing instruction, as appropriate, to students with significant cognitive disabilities, and other eligible students with disabilities who require this instruction, to enable them to:

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in the school, in the home, at work, and in the community).

(l) "Vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-045, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-045, filed 10/11/95, effective 11/11/95.]

WAC 392-172-055 Related services. (1) As used in this chapter, the term "related services" means transportation and such developmental, corrective, preventative and other supportive services as are required to assist a special education student to benefit from special education.

Related services include classified staff services, counseling services, early identification and evaluation of disabilities in students, medical services, parent counseling and training, psychological services, recreation, rehabilitation counseling services, school health services, social work services in schools, and transportation.

The list of related services is not exhaustive and may include other developmental, corrective, preventative or supportive services, if they are required to assist a special education student to benefit from special education.

(2) The terms used in the definition of "related services" are defined as follows:

(a) "Classified staff services" includes:

(i) Services provided by classified staff which provide for the student's safety, personal care, and instructional assistance; and

(ii) Services provided to certificated staff by classified staff which provide assistance for special education students to achieve placement in the least restrictive environment.

(b) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel. "Counseling services" also includes counseling and guidance of parents, children and teachers by audiologists regarding hearing loss and by speech pathologists regarding speech and language impairment.

(c) "Early identification and evaluation of disabilities in students" means the implementation of a formal plan for identifying a disability as early as possible in a student's life.

(d) "Medical services" means diagnostic and evaluation services provided by a licensed physician to determine a student's medically related disabling condition which may result in the student's need for special education and related services.

(e) "Parent counseling and training" means assisting parents in understanding the special needs of their child, providing parents with information about child development, and helping parents to acquire the necessary skills that will allow them to support the implementation of their student's IEP.

(f) "Psychological services" includes:

(i) Administering psychological and educational tests, and other evaluation procedures;

(ii) Interpreting evaluation results;

(iii) Obtaining, integrating, and interpreting information about the student's behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special needs of students as indicated by psychological tests, interviews, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for students and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(g) "Recreation" includes:

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in school and community agencies; and

(iv) Leisure education.

(h) "Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a special education student. The term also includes vocational rehabilitation services provided to special education students by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(i) "School health services" means nursing or other health services provided to a special education student by a qualified school nurse, registered nurse, licensed practical nurse or other persons qualified or appropriately trained to provide the services in the student's educational setting.

(j) "Social work services in schools" include:

(i) Preparing a social or developmental history on a special education student;

(ii) Group and individual counseling with the student and family;

(iii) Working in partnership with parents and others on those problems in a student's living situation (home, school, and/or community) that affect the student's adjustment in school;

(iv) Mobilizing school and community resources to enable the student to benefit from his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(k) "Transportation" includes:

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a special education student.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-055, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-055, filed 10/11/95, effective 11/11/95.]

WAC 392-172-065 Definition—Supplementary aids and services. As used in this chapter, the term "supplementary aids and services" means aids, services, and other supports that are provided in general education classes or other education-related settings to enable special education students to be educated with nondisabled students to the maximum extent appropriate in accordance with the least restrictive environment requirements in WAC 392-172-172.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-065, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-065, filed 10/11/95, effective 11/11/95.]

WAC 392-172-070 Definition—Assistive technology device. The term "assistive technology device" means any item, piece of equipment, or product system—whether acquired commercially off the shelf, modified, or customized—that is used to increase, maintain, or improve the functional capabilities of special education students.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-070, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-070, filed 10/11/95, effective 11/11/95.]

WAC 392-172-073 Definition—Assistive technology service. The term "assistive technology service" means any service that directly assists a special education student in the selection, acquisition, or use of an assistive technology device. The term includes:

(1) The evaluation of the needs of a special education student, including a functional evaluation of the student in the student's customary environment;

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by special education students;

(3) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(5) Training or technical assistance for a special education student, or if appropriate, the student's family; and

(6) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ or are otherwise substantially involved in the major life functions of special education students.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-073, filed 12/1/99, effective 1/1/00.]

WAC 392-172-075 Availability of assistive technology. Each public agency shall ensure that assistive technology devices or assistive technology services, or both, are made available to a special education student if required as part of the student's:

(1) Special education;

(2) Related services; or

(3) Supplementary aids and services.

On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the student's IEP team determines that the student needs access to those devices in order to receive FAPE.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-075, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-075, filed 10/11/95, effective 11/11/95.]

STUDENT SPECIFIC PROCEDURES

Identification

WAC 392-172-100 Child find. (1) The local district or other public agency shall conduct child find activities that apply to students ages birth through twenty-one for the purpose of locating, evaluating and identifying students with a suspected disability, regardless of the severity of their disability, who are residing within the boundaries of the district or other public agency and who are not currently receiving special education and related services.

These activities shall extend to students attending private schools, including religious schools. The activities undertaken to carry out child find in private schools shall be:

(a) Comparable to activities undertaken in public schools; and

(b) Developed in consultation with appropriate representatives of private school students on how to carry out the activities described in this section.

(2) Child find activities must be calculated to reach:

(a) Highly mobile students with disabilities, such as homeless and migrant students; and

(b) Students who are suspected of being a student with a disability and in need of special education, even though they are advancing from grade to grade.

(3) The local school district, or other public agency shall have policies and procedures in effect that describe the methods it uses to conduct child find activities in accordance with subsections (1) and (2) of this section. Methods used may include but are not limited to: Written notification to all parents of students in the district's or other public agency's jurisdiction regarding access to and the use of its child find system; posting notices in school buildings and

other public areas describing the availability of special education programs; offering preschool developmental screening; conducting local media informational campaigns; coordinating distribution of information with other child find programs within public and nonpublic agencies; screening district-wide test results; inservice education to staff; and other methods developed by the school district to identify, locate and evaluate students. Such methods may also include a systematic, intervention based, process within general education for determining the need for a special education referral.

(4) The collection and use of data to meet the requirements of this section are subject to the confidentiality requirements in WAC 392-172-400 through 392-172-426.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-100, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-100, filed 10/11/95, effective 11/11/95.]

Evaluation Procedures

WAC 392-172-102 Referrals. A referral of a student suspected of having a disability may be initiated by any source, in writing (or verbally, if the individual is unable to write) including but not limited to parents, medical personnel, school district or other public agency personnel, community agencies, civil authorities, through district screening procedures, and by other interested persons.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-102, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-102, filed 10/11/95, effective 11/11/95.]

WAC 392-172-104 Referral procedures—Time line. (1) When a student suspected of having a disability is brought to the attention of school personnel under WAC 392-172-102, the school district or other public agency must document the referral and:

(a) Provide the student's parent(s) or the adult student written notice that the student has been referred because of a suspected disabling condition and that the district or other public agency, with parental input, will determine whether or not there is good reason to believe that the student is a candidate for evaluation;

(b) Review the referral;

(c) Collect and examine existing school, medical and other records in the possession of the parent, school district or other public agency; and

(d) Within twenty-five school days after receipt of the referral, make a determination whether or not the student is a candidate for evaluation. This decision shall be recorded in writing and shall set forth the date and the names of the persons making the decision. The superintendent or designee shall direct a notice to the student's parent(s) or the adult student that complies with the requirements of WAC 392-172-302.

(2) When the student is a candidate for evaluation, the school district or other public agency shall obtain consent, fully evaluate the student and arrive at a decision pursuant to WAC 392-172-111 within:

(a) Thirty-five school days after the date written consent for an evaluation has been provided by the parent(s) or the adult student; or

(b) Thirty-five school days after the date the refusal of the parent(s) or the adult student to grant consent has been overridden pursuant to a hearing (or appeal) in accordance with WAC 392-172-350 et seq.; or

(c) Such other time period as may be agreed to by the parent(s) or the adult student and documented by school authorities, including specifying the reasons for extending the time line.

(3) If determined eligible under this chapter, a meeting will be held consistent with WAC 392-172-156, to develop an IEP, and special education and any necessary related services will be made available to the student in accordance with this chapter.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-104, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-104, filed 10/11/95, effective 11/11/95.]

WAC 392-172-105 Parent participation in meetings and notice. (1) Parents shall be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and provision of a free appropriate public education to the student.

(2) Each public agency shall notify parents consistent with WAC 392-172-15700 (1)(a) and (2) to ensure that parents have the opportunity to participate in meetings described in this section.

(3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-105, filed 12/1/99, effective 1/1/00.]

WAC 392-172-106 General areas of evaluation. (1) The evaluation of a student shall be in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(2) The evaluation shall be sufficiently comprehensive to identify all of the student's special education and any necessary related services needs, whether or not commonly linked to the disability category in which the student has been classified.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-106, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-106, filed 10/11/95, effective 11/11/95.]

WAC 392-172-108 Evaluation procedures. The evaluation or reevaluation of a special education student or any student being considered for special education services shall be performed using the procedures established in this chapter. Each school district or other public agency shall establish and implement evaluation procedures which meet the requirements of this chapter.

(1) Before the initial provision of special education and any necessary related services, a full and individual initial evaluation of the student's educational needs must be conducted.

(2)(a) The evaluation of a student with a suspected disability will be conducted by a group of qualified professionals selected by the district or other public agency and knowledgeable about the student and the suspected areas of disabilities.

(b) For a student suspected of having a learning disability, the determination of whether the student is eligible under this chapter shall be made by child's parent(s) and a group of qualified professionals which must include:

(i) The student's general education classroom teacher; or

(ii) If the child does not have a general education classroom teacher, a general education classroom teacher qualified to teach a child of his or her age; or

(iii) For a child of less than school age, an individual qualified to teach a child of his or her age; and

(iv) At least one individual qualified to conduct individual diagnostic examinations of children, such as school psychologist, speech language pathologist, or remedial reading teacher.

(3) Each professional member of the evaluation group shall be licensed, registered, credentialed, or certificated according to his or her professional standards in accordance with state statutes and rules.

(4) A variety of assessment tools and strategies shall be used to gather relevant functional and developmental information about the student, including information provided by the parents, and information related to enabling the student to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining:

(a) Whether the student is a special education student consistent with WAC 392-172-035(2); and

(b) The content of the student's individualized education program.

(5) No single procedure shall be the sole criterion for determining a student's eligibility or disabling condition and/or for determining the appropriate educational program for a student.

(6) Tests and other evaluation materials, used for the purpose of identification, special education needs, related services needs, and placement shall be selected and administered so as not to be racially or culturally discriminatory.

(7) Materials and procedures used to assess a student with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measuring the student's English language skills.

(8) Any standardized tests and other evaluation materials that are given to a student shall have been validated for the specific purpose for which they are used and shall accurately reflect whatever factors the tests are designed to measure. If properly validated tests are unavailable, each member of the group shall use professional judgment to determine eligibility for special education based on other evidence of the existence of a disability and need for special education. This professional judgment shall be documented in the evaluation report. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.

(9) All tests and other evaluation materials shall be administered by trained and knowledgeable personnel in conformance with the instructions of the test producer.

(10) Tests and other evaluation materials shall be provided and administered in a student's native language or other mode of communication, unless it is clearly not feasible to do so. Tests shall be selected and administered so as to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test is designed to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors the test is intended to measure). Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(11) Each school district or other public agency shall use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(12) Each school district or other public agency shall use assessment tools and strategies that provide relevant information that directly assist persons in determining the educational needs of the student.

(13)(a) Medical evaluations at the expense of a school district or other public agency shall be obtained if:

(i) The group described in WAC 392-172-108(2) suspects a student of having a health problem which may affect his or her eligibility and need for special education and any necessary related services; and

(ii) In accordance with criteria established by the school district or other public agency.

(b) Medical evaluation services necessary to make a determination of the educational needs of residential school students, shall be the responsibility of the department of social and health services pursuant to RCW 28A.190.040. The state schools for the deaf and blind are responsible for the provision of these services under chapter 72.40 RCW.

(14) An evaluation report and documentation of determination of eligibility shall be developed consistent with the requirements of WAC 392-172-10905 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-108, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-108, filed 10/11/95, effective 11/11/95.]

WAC 392-172-10900 Determination of needed evaluation data. (1) As part of an evaluation, a group that includes the individuals described in WAC 392-172-153, and other qualified professionals, as appropriate, shall:

Review existing evaluation data on the student, including:

(a) Evaluations and information provided by the parents of the student;

(b) Current classroom-based assessment and observations; and

(c) Observations by teachers and related services providers.

(2) Based on the above review and input from the student's parents, identify what additional data, if any, are needed to determine:

(a) Whether the student has a particular category of disability as described in this chapter;

(b) The present levels of performance and educational needs of the student; and

(c) Whether the student needs special education and related services.

(3) The public agency shall administer tests and any other evaluation materials, pursuant to WAC 392-172-108 as may be needed to produce the data required to make the determinations listed in subsection (2) of this section.

(4) The group described in subsection (1) of this section may conduct its review without a meeting. If the school district or other public agency conducts a meeting for the purposes under this section, parents must have an opportunity to participate in the meeting consistent with WAC 392-172-105.

(5) If no additional data are needed to make the determination listed in subsection (2) of this section, the public agency shall notify the student's parents of this fact and the reasons for this decision, consistent with WAC 392-172-302.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-10900, filed 12/1/99, effective 1/1/00.]

WAC 392-172-10905 Evaluation report and documentation of determination of eligibility. (1) In interpreting evaluation data for the purpose of determining if a student is a special education student under this chapter, and the educational needs of the student, each public agency shall:

(a) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and

(b) Ensure that information obtained from all of these sources is documented and carefully considered.

(2) A student may not be determined to be a special education student if the determinant factor for that decision is:

(a) Lack of instruction in reading or math; or

(b) Limited English proficiency; and

(c) The student does not otherwise meet the eligibility criteria in this chapter.

(3) An evaluation report shall be sufficient in scope to develop an IEP consistent with WAC 392-172-160 through 392-172-164 and, at a minimum, must include:

(a) A statement of whether the student has a disability that meets the eligibility criteria in this chapter;

(b) How the student's disability affects the student's involvement and progress in the general curriculum or for preschool children, in appropriate activities;

(c) The recommended special education and related services needed by the student including specially designed instruction;

(d) Other information, as determined through the evaluation process and parental input, needed to develop an IEP;

(e) A statement that the student was evaluated in accordance with the evaluation procedures in WAC 392-172-108; and

(f) The date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion. If the evaluation report does not reflect his or her conclusion, the professional member of the group must include a separate statement representing his or her conclusions.

(4) For a student suspected of having a learning disability, the evaluation report must be signed by all members of the evaluation group in WAC 392-172-108 (2)(b) and must also include a statement of:

(a) All of the information required in subsection (1) of this section and the information required in WAC 392-172-132;

(b) The specific learning disability(ies);

(c) The basis for making the determination;

(d) The relevant behavior noted during the observation of the student;

(e) The relationship of that behavior to the student's academic functioning;

(f) The medically relevant findings, if any;

(g) A statement about whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and

(h) The determination of the group concerning the effects of environmental, cultural, or economic disadvantage.

(5) Each professional member of the group who contributed to the evaluation report shall document the results of their individual assessments. This documentation must include:

(a) The procedures and instruments used in any assessment and the results obtained;

(b) Any conclusions from observations of the student; and

(c) A statement of the apparent significance of the findings as related to the student's suspected disability(ies) and instructional program.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-10905, filed 12/1/99, effective 1/1/00.]

WAC 392-172-111 Determination of eligibility and parental notification. (1) Upon completing the administration of tests and other evaluation materials:

(a) Consistent with WAC 392-172-105 and 392-172-15705, a group of qualified professionals and the parent of the student shall determine whether the student is a special education student in need of special education and any necessary related services, as defined in this chapter; and

(b) The public agency must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

(2) If a determination is made that a student has a disability and needs special education and related services, an IEP must be developed for the student in accordance with this chapter.

(3) If the decision is that the student is not eligible for special education, the parent(s) of the student shall be informed in writing of the evaluation findings in compliance with the notice requirements of WAC 392-172-302, within ten school days following the completion of the evaluation.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-111, filed 12/1/99, effective 1/1/00.]

Eligibility Criteria for Students with Disabilities

WAC 392-172-114 Definition and eligibility criteria for developmentally delayed. Definition and eligibility criteria for developmentally delayed are as follows:

(1) As used in this chapter, the term "developmentally delayed, birth to three years" shall mean those children under three years of age who:

(a) Demonstrate a 1.5 standard deviation or twenty-five percent delay in cognitive development, communication development, physical development, social or emotional development, or adaptive development as defined in WAC 392-172-116; or

(b) Qualify for one of the other eligibility categories specified in this chapter; and

(c) Are in need of special education and any necessary related services. Children who qualify for special education services under this category must be reevaluated prior to age three in order to continue to be eligible for special education and related services.

(2) As used in this chapter, the term "developmentally delayed, three to six years" shall mean those children between three and six years of age who demonstrate a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

(a) Two standard deviations below the mean in one or more of the five developmental areas defined in WAC 392-172-116; or

(b) One and one-half standard deviations below the mean in two or more of the five developmental areas defined in WAC 392-172-116; or

(c) Qualify for one of the other eligibility categories specified in this chapter; and

(d) Are in need of special education and any necessary related services.

(e) Children aged six to nine years who previously qualified as "developmentally delayed, three to six years," may at the option of the school district or other public agency, continue to be eligible under the criteria for "developmentally delayed, three to six years" until they are reevaluated, but not later than three years after the eligibility decision for "developmentally delayed, three to six years" was initially made.

(3) As used in this chapter, the term "developmentally delayed, six to nine years" shall mean those children between six and nine years of age who either continue to qualify under subsection (2) of this section, or demonstrate a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

(a) Two standard deviations below the mean in one or more of the five developmental areas defined in WAC 392-172-116; or

(b) Qualify for one of the other eligibility categories specified in this chapter; and

(c) Are in need of special education and any necessary related services.

(4) Children who qualify for special education as "developmentally delayed, six to nine years" must be reevaluated prior to the age of nine consistent with WAC 392-172-182 et seq. and a determination made that the child either:

(a) Qualifies under the provisions of one of the other disabling conditions in this chapter; or

(b) Is no longer in need of special education and related services.

(5) A school district or other public agency is not required to adopt and use the category "developmentally delayed" for children, three to nine, within its jurisdiction.

(6) If a school district or other public agency uses the category "developmentally delayed," the district or public agency must conform to both the definition and age range of three to nine, established under this section.

(7) School districts or other public agencies who use the category "developmentally delayed," may also use any other eligibility category at any time.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-114, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-114, filed 10/11/95, effective 11/11/95.]

WAC 392-172-116 Areas of developmental delay—Definitions. The five developmental areas for the purpose of applying eligibility criteria to developmentally delayed children are:

(1) Cognitive development: Comprehending, remembering, and making sense out of one's experience. Cognitive ability is the ability to think and is often thought of in terms of intelligence;

(2) Communication development: The ability to effectively use or understand age-appropriate language, including vocabulary, grammar, and speech sounds;

(3) Physical development: Fine and/or gross motor skills requiring precise, coordinated, use of small muscles and/or motor skills used for body control such as standing, walking, balance, and climbing;

(4) Social or emotional development: The ability to develop and maintain functional interpersonal relationships and to exhibit age appropriate social and emotional behaviors; and

(5) Adaptive development: The ability to develop and exhibit age appropriate self-help skills, including independent feeding, toileting, personal hygiene and dressing skills.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-116, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-116, filed 10/11/95, effective 11/11/95.]

WAC 392-172-118 Definition and eligibility for emotionally/behaviorally disabled. (1) Students who are emotionally/behaviorally disabled are those who exhibit over a long period of time and to a marked degree, one or more of the following characteristics, which adversely affects their educational performance and requires specially designed instruction:

(a) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(c) Inappropriate types of behavior or feelings under normal circumstances;

(d) A general pervasive mood of unhappiness or depression; or

(e) A tendency to develop physical symptoms or fears associated with personal or school problems.

(2) The term includes students who are schizophrenic.

(3) The term does not include students who are socially maladjusted, unless it is determined that they are also emotionally/behaviorally disabled.

(4) All students considered for special education and any necessary related services in this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-118, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-118, filed 10/11/95, effective 11/11/95.]

WAC 392-172-120 Definition and eligibility for communication disordered. A student shall be considered to have a communication disorder if there is a documented speech or language impairment such as stuttering, voice disorder, language impairment, or impaired articulation which adversely affects a student's educational performance and requires specially designed instruction.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-120, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-120, filed 10/11/95, effective 11/11/95.]

WAC 392-172-122 Definition and eligibility for orthopedically impaired. Students who are orthopedically impaired are those who lack normal function of muscles, joints or bones due to congenital anomaly, disease or permanent injury, and such conditions adversely affect their educational performance and require specially designed instruction.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-122, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-122, filed 10/11/95, effective 11/11/95.]

WAC 392-172-124 Definition and eligibility for health impaired. Students with health impairments are those who have limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment due to chronic or acute health problems, such as a heart condition, rheumatic fever, nephritis, asthma, attention deficit disorder or attention deficit hyperactivity disorder, sickle cell anemia, hemophilia, lead poisoning, leukemia, or diabetes, that adversely affect their educational performance and require specially designed instruction.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-124, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-124, filed 10/11/95, effective 11/11/95.]

WAC 392-172-126 Definition and eligibility for specific learning disability. (1) Specific learning disability is a d[illegible]der in one or more of the basic psychological processes involved in understanding or using spoken or written language that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(2) Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(3) All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability in

accordance with the procedures in WAC 392-172-106 through 392-172-111 in addition to the procedures set forth in WAC 392-172-128 through 392-172-132.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-126, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-126, filed 10/11/95, effective 11/11/95.]

WAC 392-172-128 Specific learning disability—Evaluation procedures. The group described in WAC 392-172-108 (2)(b) may determine that a student has a specific learning disability if:

(1) The student does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in subsection (2) of this section, if provided with learning experiences appropriate for the student's age and ability levels;

(2) The group finds that a student has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

(a) Oral expression.
(b) Listening comprehension.
(c) Written expression.
(d) Basic reading skill.
(e) Reading comprehension.
(f) Mathematics calculations.
(g) Mathematics reasoning;

(3) The group may not identify a student as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

(a) A visual, hearing, or motor impairment;
(b) Mental retardation;
(c) Emotional/behavioral disability; or
(d) Environmental, cultural or economic disadvantage;

(4) At least one group member other than the student's general education teacher shall observe the student's academic performance in the general classroom setting;

(5) In the case of a student of less than school age or out of school, a group member shall observe the student in an environment appropriate for a student of that age;

(6) Written documentation that the student has an academic achievement problem in the general education program shall be available. Examples of data used for documentation may include:

(a) Student performance on daily classroom work and/or criterion-referenced tests;
(b) Summary of past student performance;
(c) Group test results;
(d) Teacher observation and judgments; and
(e) Performance on state established standards;

(7) Documentation of the existence of a severe discrepancy between the student's intellectual ability and academic achievement in one or more of the seven areas specified in this section shall be recorded. Such documentation shall conform to the requirements of WAC 392-172-132; and

(8) Tests used to assess the student's intellectual ability and academic achievement shall be:

(a) Reliable as demonstrated by a reliability coefficient of .85 or above;
(b) Normed on representative national samples; and

(c) Selected and individually administered in accordance with the general requirements of WAC 392-172-106 through 392-172-108.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-128, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-128, filed 10/11/95, effective 11/11/95.]

WAC 392-172-130 Discrepancy tables for determining severe discrepancy under WAC 392-172-132. The superintendent of public instruction shall develop and publish discrepancy tables for the purpose of determining a severe discrepancy between intellectual ability and academic achievement pursuant to WAC 392-172-132. Such tables shall be developed on the basis of a regressed standard score discrepancy method which shall consider the following variables:

(1) The reliability coefficient of the intellectual ability test;

(2) The reliability coefficient of the academic achievement test; and

(3) An appropriate correlation between the intellectual ability and the academic achievement tests.

The regressed standard score discrepancy method shall be applied at a criterion level of 1.55.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-130, filed 10/11/95, effective 11/11/95.]

WAC 392-172-132 Method for documenting severe discrepancy. (1) A severe discrepancy shall be determined and documented from tables developed pursuant to WAC 392-172-130.

(2) For the purposes of applying the severe discrepancy tables, the following scores shall be used:

(a) A total or full scale intellectual ability score;

(b) An academic achievement test score which can be converted into a standard score with a mean of one hundred and a standard deviation of fifteen; and

(c) A severe discrepancy between the student's intellectual ability and academic achievement in one or more of the seven areas provided for in WAC 392-172-128 shall be determined by applying the regressed standard score discrepancy method to the obtained intellectual ability and achievement test scores using the tables referenced above. Where the evaluation results do not appear to accurately represent the student's intellectual ability and where the discrepancy between the student's intellectual ability and academic achievement does not initially appear to be severe upon application of the discrepancy tables in WAC 392-172-130, the evaluation group, described in WAC 392-172-108 (2)(b), shall apply professional judgment in order to determine the presence of a severe discrepancy. In this event, the group shall document in a written narrative an explanation as to why the student has a severe discrepancy. The written narrative must provide supportive evidence, including the procedures used to determine that a severe discrepancy exists between the student's intellectual ability and academic achievement. If the prohibition against the use of specific tests or test results as provided in WAC 392-172-108 precludes the use of any of the tests referenced above, the evaluation group shall document the basis upon which the members decided that there exists a severe discrepancy.

(3) Each member of the evaluation group shall certify in writing whether the evaluation report in WAC 302-172-10905 (3) and (4) reflects his or her conclusion. If it does not, the group member must submit a separate statement presenting his or her conclusion.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-132, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-132, filed 10/11/95, effective 11/11/95.]

WAC 392-172-134 Definition and eligibility for mental retardation. Students with mental retardation are those who demonstrate significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects their educational performance and requires specially designed instruction.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-134, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-134, filed 10/11/95, effective 11/11/95.]

WAC 392-172-136 Definition and eligibility for multiple disabilities. Multiple disabilities means concomitant impairments which adversely affect education performance and require specially designed instruction (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-136, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-136, filed 10/11/95, effective 11/11/95.]

WAC 392-172-138 Definition and eligibility for deafness. Students who are deaf are those students who have a documented hearing impairment which is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects educational performance and requires specially designed instruction.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-138, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-138, filed 10/11/95, effective 11/11/95.]

WAC 392-172-140 Definition and eligibility criteria for hearing impairment. Students with hearing impairments have impaired hearing, whether permanent or fluctuating, that adversely affects the student's educational performance and requires specially designed instruction but is not included under the definition of deafness.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-140, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-140, filed 10/11/95, effective 11/11/95.]

WAC 392-172-142 Definition and eligibility for visually impaired/blindness. Students with a visual impairment including blindness have an impairment that, even with correction, adversely affects the student's educational performance and requires specially designed instruction. The term includes both partial sight and blindness.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-142, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-142, filed 10/11/95, effective 11/11/95.]

WAC 392-172-144 Definition and eligibility for deaf/blindness. Students with deaf/blindness are those whose hearing and vision impairments, in combination, cause such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or blindness. The impairments adversely affect the student's educational performance and require specially designed instruction.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-144, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-144, filed 10/11/95, effective 11/11/95.]

WAC 392-172-146 Definition and eligibility for autism. "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student's educational performance and requires specially designed instruction. If a student manifests characteristics of autism after age three, that student still could be diagnosed as having autism if the criteria in this section are satisfied.

Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines and unusual responses to sensory experiences.

The term does not apply if a student's educational performance is adversely affected primarily because the student has an emotional/behavioral disability, as defined in this chapter.

The category of autism includes students with pervasive developmental disorders.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-146, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-146, filed 10/11/95, effective 11/11/95.]

WAC 392-172-148 Definition and eligibility for traumatic brain injury. "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance and requires specially designed instruction. The term applies to open or closed head injuries resulting in impairments in one or more of the following areas such as: Cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative or brain injuries induced by birth trauma.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-148, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-148, filed 10/11/95, effective 11/11/95.]

WAC 392-172-150 Independent educational evaluation. (1) Parents of a special education student or a student referred for special education have the right under this chapter to obtain an independent educational evaluation of the student if the parent disagrees with the school district's or other public agency's evaluation subject to subsections (4) through (11) of this section.

(2) Each school district or other public agency shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in subsections (10) and (11) of this section.

(3) For the purposes of this section:

(a) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the school district or other public agency responsible for the education of the student in question; and

(b) Public expense means that the school district or other public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with this chapter.

(4) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district or other public agency.

(5) If a parent requests an independent educational evaluation at public expense, the school district or other public agency must either:

(a) Initiate a hearing within fifteen days under this chapter to show that its evaluation is appropriate; or

(b) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing under this chapter that the evaluation obtained by the parent did not meet agency criteria.

(6) If the school district or other public agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(7) If a parent requests an independent educational evaluation, the school district or other public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the school district or other public agency must either provide the independent educational evaluation at public expense or initiate a due process hearing to defend the public evaluation.

(8) If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:

(a) Must be considered by the school district or other public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and

(b) May be presented as evidence at a hearing under this chapter regarding that student.

(9) If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(10) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district or other public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(11) Except for the criteria described in subsection (10) of this section, a school district or other public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-150, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-150, filed 10/11/95, effective 11/11/95.]

Individual Education Program

WAC 392-172-153 IEP team members. The school district or other public agency shall ensure that the IEP team for each special education student includes:

(1) The parent(s) of the student;

(2) At least one general education teacher (or preschool education provider) of the student if the student is, or may be participating, in the general education environment;

(3) At least one special education teacher of the student, or if appropriate, at least one special education provider of the student;

(4) A representative of the school district or public agency who:

(a) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of special education students;

(b) Is knowledgeable about the general curriculum; and

(c) Is knowledgeable about the availability of resources of the school district or other public agency.

(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in subsections (2) through (6) of this section.

(6) At the discretion of the parent or the school district or other public agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate;

(7) If appropriate, the student; and

(8) Transition services participants as described in WAC 392-172-166.

The determination of the knowledge or special expertise of any individual described in this section shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP team.

A public agency may designate another public agency member of the IEP team to also serve as the agency representative, if the criteria in this section are satisfied.

[Statutory Authority: RCW 28A.155.090(7). 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-153, filed 12/1/99, effective 1/1/00.]

WAC 392-172-156 IEP meetings. A meeting shall be held within thirty calendar days after the date the eligible student's evaluation is completed and group of qualified professionals and the parent determine the student is eligible pursuant to WAC 392-172-111 for the purpose of developing the student's individualized education program. Meetings consistent with this section shall be conducted by the school district or other public agency periodically but at least annually for the purpose of reviewing and revising as necessary each student's individualized education program, to determine whether the annual goals for the student are being achieved. The individualized education program shall be revised, as appropriate, to address: Any lack ofexpected progress toward the annual goals and in the general curriculum if appropriate; the results of any reevaluation conducted; information about the student provided to, or by, the parents; the student's anticipated needs; or other matters.

[Statutory Authority: RCW 28A.155.090(7). 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-156, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-156, filed 10/11/95, effective 11/11/95.]

WAC 392-172-15700 Parent and general education teacher participation in meetings. (1) Each school district or other public agency shall take steps to ensure (in the case of nonadult students) that one or both parents of the special education student are present at each meeting or are afforded the opportunity to participate, by:

(a) Notifying the parent(s) of the meeting early enough to ensure that they will have an opportunity to attend; and

(b) Scheduling the meeting at a mutually agreed upon place and time.

(2) The notice to the parent(s) shall include the purpose, time, location of the meeting and who will be in attendance. If the purpose of the meeting is to develop, review or revise an IEP, the notice shall also inform the parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. If the purpose of the meeting is the consideration of transition needs or services, the provisions in WAC 392-172-164 apply.

(3) If neither parent can attend, the district or other public agency shall use other methods to ensure participation, including individual or conference telephone calls, or video conferencing.

(4) If neither parent can attend (in the case of a nonadult student), a meeting may be conducted without a parent if the district or other public agency is unable to convince the parents that they should attend. In such a case the school district or other public agency must have a record of its attempts to arrange a mutually agreed upon time and place. The record shall contain such information as:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(5) The school district or other public agency shall take whatever action is necessary to ensure that the parent or adult student understands the proceedings at an IEP meeting, or any other meeting, including arranging for an interpreter for parents (or adult students) who are deaf or whose native language is other than English.

(6) The general education teacher of a special education student (or preschool education provider), as a member of the individualized education program team, must, to the extent appropriate, participate in the development, review, and revision of the student's individualized education program, including assisting in:

(a) The determination of appropriate positive behavioral interventions and strategies for the student; and

(b) The determination of supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student consistent with WAC 392-172-160 (1)(c).

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-15700, filed 12/1/99, effective 1/1/00.]

WAC 392-172-15705 Parent involvement in placement decisions. (1) Each public agency shall ensure that the parents of each special education student are afforded the opportunity to be members of any team that makes decisions on the educational placement of their student.

(2) In implementing the requirements of this section, the public agency shall use procedures consistent with the procedures described in WAC 392-172-15700.

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their student, the public agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by a team without the involvement of the parents, if the public agency is unable to obtain the parents' participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement, including information that is consistent with the requirements of WAC 392-172-15700.

(5) The public agency shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any team discussions relating to the educational placement of their student, consistent with WAC 392-172-15700.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-15705, filed 12/1/99, effective 1/1/00.]

WAC 392-172-158 Individualized education program—Implementation. (1) At the beginning of each school year, each public agency shall have in effect an individualized education program for every special education student within its jurisdiction. An individualized education program must:

(a) Be in effect before special education and related services are provided to an eligible student; and

(b) Be implemented as soon as possible following the meetings under this chapter.

(2) The student's IEP shall be accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation; and

(3) Each teacher and provider described above shall be informed of:

(a) His or her specific responsibilities related to implementing the student's IEP; and

(b) The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-158, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-158, filed 10/11/95, effective 11/11/95.]

WAC 392-172-159 Development, review, and revision of individualized education program-consideration of special factors. (1) In developing, reviewing and revising each student's individualized education program, the team shall consider:

(a) The strengths of the student and the concerns of the parents for enhancing the education of their student; and

(b) The results of the initial or most recent evaluation of the student; and

(c) As appropriate, the results of the student's performance on any general state or district-wide assessment programs.

(2) The individualized education program team also shall:

(a) In the case of a student whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

(b) In the case of a student with limited English proficiency, consider the language needs of the student as these needs relate to the student's individualized education program;

(c) In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student;

(d) Consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and

(e) Consider whether the student requires assistive technology devices and services.

(3) If, in considering the special factors described above, the IEP team determines that a student needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the student to receive a free appropriate public education, the

IEP team must include a statement to that effect in the student's individualized education program.

(4) Nothing in this section requires the team to include information under one component of a student's individualized education program that is already contained under another component of the student's individualized education program.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-159, filed 12/1/99, effective 1/1/00.]

WAC 392-172-160 Individualized education program. (1) Each student's individualized education program shall include:

(a) A statement of the student's present levels of educational performance, including:

(i) How the student's disability affects the student's involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled students); or

(ii) For preschool students, as appropriate, how the disability affects the student's participation in appropriate activities.

(b) A statement of measurable annual goals, including benchmarks or short-term objectives, related to:

(i) Meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general curriculum (i.e., the same curriculum as for nondisabled students), or for preschool students, as appropriate, to participate in appropriate activities; and

(ii) Meeting each of the student's other educational needs that result from the student's disability.

(c) A statement of the special education and any necessary related services and supplementary aids and services to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided for the student consistent with WAC 392-172-045 (4)(a):

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved and progress in the general curriculum in accordance with this section and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other special education students and nondisabled students in the activities described in this section.

(d) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the general class and in activities described in this section.

(e) A statement of any individual modifications in the administration of state or district-wide assessments of student achievement that are needed in order for the student to participate in the assessment. If the individualized education program team determines that the student will not participate in a particular state or district-wide assessment of student achievement (or part of an assessment), a statement of:

(i) Why that assessment is not appropriate for the student; and

(ii) How the student will be assessed.

(f) The projected date for the beginning of the services and modification described in this section and the anticipated frequency, location, and duration of those services and modifications.

(g) A statement of:

(i) How the student's progress toward the annual goals described in this section will be measured; and

(ii) How the student's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their nondisabled student's progress of:

(A) The annual goals; and

(B) The extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year.

(h) For each special education student beginning at age fourteen (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced placement courses or a vocational education program).

(i) For each student beginning at age sixteen (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

(j) If a participating agency, other than the public agency, fails to provide the transition services described in the IEP, the public agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

(k) Beginning at least one year before a student reaches age eighteen, consistent with WAC 392-172-309, the student's individualized education program must include a statement that the student has been informed of his or her rights under Part B of the Individuals with Disabilities Education Act, if any, that will transfer to the student on reaching the age of majority.

(l) Aversive interventions, if applicable, consistent with WAC 392-172-388 through 392-172-398. The individualized education program shall describe the positive interventions attempted by the district or other public agency prior to the use of aversive interventions.

(m) Extended school year services, pursuant to WAC 392-172-163.

(2) Nothing in this chapter relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to special education students who meet the eligibility criteria of that agency.

(3) The school district or other public agency shall provide the parent or the adult student a copy of the individualized education program at no cost.

(4) Each public agency must:

(a) Provide special education and related services to a special education student in accordance with an individualized education program; and

(b) Make a good faith effort to assist the student to achieve the goals and objectives or benchmarks listed in the IEP.

(i) Part B of the Individuals with Disabilities Education Act does not require that any agency, teacher, or other person be held accountable if a student does not achieve the growth projected in the annual goals and benchmarks or objectives.

(ii) Nothing in this section limits a parent's right to ask for revisions of the student's IEP or to invoke due process procedures if the parent feels that the efforts required in this subsection are not being made.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-160, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-160, filed 10/11/95, effective 11/11/95.]

WAC 392-172-162 Physical education required. (1) Physical education services, specially designed if necessary, must be made available to every special education student receiving FAPE.

(2) Each special education student must be afforded the opportunity to participate in the general physical education program available to students who are not disabled unless:

(a) The student is enrolled full time in a separate facility; or

(b) The student needs specially designed physical education, as prescribed in the student's individualized education program.

(3) If specially designed physical education is prescribed in a student's individualized education program, the school district or other public agency shall ensure that the public agency responsible for the education of that student provides the service directly, or makes arrangements for it to be provided through other public or private programs.

(4) The school district or other public agency shall ensure that any special education student who is enrolled in a separate facility will be provided with appropriate physical education services.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-162, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-162, filed 10/11/95, effective 11/11/95.]

WAC 392-172-163 Extended school year services. (1) Each public agency shall ensure that extended school year services are available as necessary to provide FAPE, consistent with this section.

(2) Extended school year services must be provided only if a student's IEP team determines, on an individual basis, in accordance with this chapter that the services are necessary for the provision of FAPE to the student.

(3) In implementing the requirements of this section, a public agency may not:

(a) Limit extended school year services to particular categories of disability; or

(b) Unilaterally limit the type, amount, or duration of those services.

(4) As used in this section, the term extended school year services means special education and any necessary related services that:

(a) Are provided to a student with a disability:

(i) Beyond the normal school year of the public agency;

(ii) In accordance with the student's IEP; and

(iii) At no cost to the parents of the student; and

(b) Meet the standards of the state for provision of special education and related services.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-163, filed 12/1/99, effective 1/1/00.]

WAC 392-172-164 Parent notice of individualized education program meeting—Transition needs or services. If a purpose of the individualized education program meeting is the consideration of transition services needs or services for a student, the notice required under WAC 392-172-15700 of the individualized education program meeting must also:

(1) For a special education student beginning at age fourteen, or younger, if appropriate:

(a) Indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student; and

(b) Indicate that the agency will invite the student.

(2) For a special education student beginning at age sixteen, or younger, if appropriate:

(a) Indicate that a purpose of the meeting is the consideration of needed transition services for the student;

(b) Indicate that the agency will invite the student; and

(c) Identify any other agency that will be invited to send a representative.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-164, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-164, filed 10/11/95, effective 11/11/95.]

WAC 392-172-166 Transition services, student participation. (1) The school district or other public agency shall invite a special education student of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of:

(a) The student's transition services needs;

(b) The needed transition services for the student; or

(c) Both.

(2) If the student does not attend the IEP meeting, the school district or other public agency shall take other steps to ensure that the student's preferences and interests are considered.

(3) In implementing the requirements of this section, the school district or other public agency also shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services.

(4) If an agency invited to send a representative to a meeting does not do so, the school district or other public agency shall take other steps to obtain participation of the other agency in the planning of any transition services.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-166, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-166, filed 10/11/95, effective 11/11/95.]

Service Delivery Options

WAC 392-172-170 Initial service delivery—Parental consent for initial placement—Notice required. (1) Written consent of the parent(s) or adult student shall be requested and obtained, consistent with WAC 392-172-304 before initial special education and related services are provided.

(2) Each school district or other public agency shall provide prior written notice of the initial provision of special education services to the student, consistent with WAC 392-172-302.

(3) The student's proposed special education and related services shall begin when:

(a) Written consent has been given by the parent(s) or the adult student (using mediation if appropriate); or

(b) The refusal of a student's parent(s) or adult student to grant consent has been overridden by the school district or other public agency pursuant to a hearing (or appeal) conducted in accordance with WAC 392-172-350 et seq.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-170, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-170, filed 10/11/95, effective 11/11/95.]

WAC 392-172-172 Least restrictive environment. Each public agency shall establish and implement procedures which meet the least restrictive environment requirements of this chapter. The provision of services to each special education student, including preschool students and students in public or private institutions or other care facilities, shall be provided:

(1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and

(2) Special classes, separate schooling or other removal of students with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(3) Nonacademic settings—Each special education student shall be provided nonacademic and extracurricular services and activities conducted by the school district or other public agency with students who are not disabled to the maximum extent appropriate to the needs of the student. Nonacademic and extracurricular services and activities may also include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district or other public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the district or other public agency and assistance in making outside employment available. Each school district or public agency shall take steps to ensure that its special education students have available to them the variety of educational programs and services available to nonspecial education students in the area served by the school district or public agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-172, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-172, filed 10/11/95, effective 11/11/95.]

WAC 392-172-174 Continuum of alternative service delivery options. (1) Each school district or other public agency shall ensure that a continuum of alternative placements is available to meet the needs of special education students for special education and related services.

(2) The continuum required in this section must:

(a) Include the alternative placements listed in the definition of special education in WAC 392-172-045, such as instruction in general classes, special classes, special schools, home instruction, and instruction in hospitals and institutions; and

(b) Make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general classroom placement.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-174, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-174, filed 10/11/95, effective 11/11/95.]

WAC 392-172-176 Transition to preschool program. Each school district or other public agency shall have policies and procedures for transition to preschool programs to ensure that:

(1) Students participating in early intervention programs assisted under Part C of the IDEA, and who will participate in preschool programs assisted under Part B of the IDEA, experience a smooth and effective transition to those preschool programs in a manner consistent with the Part C requirements.

(2) Each school district will participate in transition planning conferences arranged by the designated lead agency for Part C in the state. A transition planning conference will be convened for each student who may be eligible for preschool services at least ninety days (or at the discretion of all parties up to six months) prior to the student's third birthday.

(3) By the third birthday of a student described in subsection (1) of this section, an IEP has been developed and is being implemented for the student consistent with WAC 392-172-030(1).

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-176, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-176, filed 10/11/95, effective 11/11/95.]

WAC 392-172-180 Procedures for establishing educational placement. (1) The educational placement of each special education student, including a preschool student, shall be determined at least annually at a meeting conducted pursuant to WAC 392-172-156.

(2) The selection of the appropriate placement for each special education student shall be based upon:

(a) The student's individualized education program;

(b) The least restrictive environment requirements of WAC 392-172-172;

(c) The placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and

(d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs.

(3) Unless the IEP of a special education student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. The placement shall be as close as possible to the student's home, unless the parents otherwise agree.

(4) The decision on the educational placement shall be made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options.

(5) A special education student is not removed from education in age-appropriate general classrooms solely because of needed modifications in the general curriculum.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-180, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-180, filed 10/11/95, effective 11/11/95.]

Evaluation of Progress—Reevaluation

WAC 392-172-182 Reevaluation—Requirement. Each school district or other public agency shall ensure:

(1) That the IEP of each special education student is reviewed in accordance with this chapter; and

(2) That a reevaluation of each student is conducted in accordance with this chapter if conditions warrant a reevaluation, or if the student's parent or teacher requests a reevaluation, but at least once every three years.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-182, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-182, filed 10/11/95, effective 11/11/95.]

WAC 392-172-185 Reevaluation—Notice and consent requirements. (1) A reasonable time prior to conducting a reevaluation, the district or other public agency shall provide prior written notice to parents or adult students consistent with WAC 392-172-302.

(2) Informed parental consent for reevaluation shall be obtained consistent with the provisions in WAC 392-172-304.

(3) Parental consent is not required before reviewing existing data as part of a reevaluation, or administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

(4) Informed parental consent need not be obtained for reevaluation if the school district or other public agency can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parent has failed to respond.

(5) To meet the reasonable measures requirement in this section, the public agency must use procedures consistent with those in WAC 392-172-15700 (3) and (4).

(6) A reevaluation shall be conducted consistent with the timelines in WAC 392-172-104(2) and 392-172-182(2).

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-185, filed 12/1/99, effective 1/1/00.]

WAC 392-172-186 Reevaluation—Procedures. (1) As part of any reevaluation, a group that includes the individuals described in WAC 392-172-153, and other qualified professionals, as appropriate, shall review existing evaluation data on the student, including:

(a) Evaluations and information provided by the parents of the student;

(b) Current classroom-based assessment and observations; and

(c) Observations by teachers and related services providers.

(2) Based on the above review and input from the student's parents, identify what additional data, if any, are needed to determine:

(a) Whether the student continues to be a special education student and continues to need special education and any necessary related services;

(b) The present levels of performance and educational needs of the student; and

(c) If any additions or modifications to the special education and any necessary related services are needed to enable the student to meet the measurable annual goals set out in the student's individualized education program and to participate, as appropriate, in the general curriculum.

(3) The group described in subsection (1) of this section may conduct its review without a meeting. If the school district or other public agency conducts a meeting for the purposes under this section, parents must have an opportunity to participate in the meeting consistent with WAC 392-172-105.

(4) A public agency must evaluate a special education student in accordance with this chapter before determining that the student is no longer a special education student.

(5) The evaluation described in subsection (4) of this section is not required before the termination of a student's eligibility under this chapter due to graduation with a regular high school diploma, or exceeding the age eligibility for FAPE under state law. Prior written notice is required, consistent with WAC 392-172-302.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-186, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-186, filed 10/11/95, effective 11/11/95.]

WAC 392-172-188 Reevaluation—Purposes. The group described in WAC 392-172-186 shall determine if additional evaluation procedures are necessary to confirm the decisions to be made in WAC 392-172-186, consistent with WAC 392-172-106 through 392-172-111.

If no additional data are needed to determine whether the student continues to be a special education student, the school district or other public agency shall notify the student's parents, consistent with WAC 392-172-302:

(1) Of that determination and the reasons for it; and

(2) Of the right of the parents to request an assessment to determine, for purposes of services under this chapter, the continuing eligibility of the student.

The school district or other public agency is not required to conduct the assessment unless requested to do so by the parents.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-188, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-188, filed 10/11/95, effective 11/11/95.]

WAC 392-172-190 Reevaluation—Notice of results. Within ten calendar days of the completion of the reevaluation, the district or other public agency superintendent or designee shall notify the parent or adult student, pursuant to WAC 392-172-302, of one or more of the following decisions:

(1) Whether the student continues to be eligible and in need of special education;

(2) The present levels of performance and educational needs of the student; and

(3) Whether any additions or modifications to the special education and any necessary related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general curriculum.

When a determination is made that the individualized education program is no longer appropriate, an individualized education program team meeting shall be convened in accordance with WAC 392-172-153 through 392-172-166.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-190, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-190, filed 10/11/95, effective 11/11/95.]

SERVICE DELIVERY STANDARDS

Staff Qualifications

WAC 392-172-200 Staff qualifications for special education funding. All employees of a school district or other public agency funded in whole or part with state or federal special education excess cost funds shall be qualified as follows:

(1) All employees shall hold such credentials, certificates, endorsements or permits as are now or hereafter required by the state board of education for the particular position of employment and shall meet such supplemental standards as may be established by the school district or other public agency of employment. Supplemental standards established by a district or other public agency may exceed, but not be less than, those established by this section.

Pursuant to WAC 180-82-110, after August 31, 2000, a teacher who has completed twenty-four quarter hours (sixteen semester credit hours) of the required special education course work shall be eligible for a pre-endorsement waiver which will allow that person to be employed as a special education teacher. The remaining credits and all endorsement requirements shall be completed within three years of service as a special education teacher. Application for the special education or early childhood special education preendorsement waiver shall be made to the special education section at the office of superintendent of public instruction.

(2) In addition to the requirement of subsection (1) of this section, all special education teachers providing, designing, supervising, monitoring or evaluating the provision of special education shall possess "substantial professional training." "Substantial professional training" as used in this section shall be evidenced by issuance of an appropriate special education endorsement on an individual teaching certificate issued by the superintendent of public instruction.

(3) Other certificated instructional personnel providing specially designed instruction or related services as defined in this chapter, shall meet standards established under the educational staff associate rules of the state board of education, as now or hereafter amended.

(4) Employees with only an early childhood special education endorsement shall be assigned to programs that serve students birth through age eight. Preference for early childhood special education assignment must always be given first to employees having early childhood special education endorsement.

(5) Certified and/or classified staff assigned to provide instruction in Braille, the use of Braille, or the production of Braille must demonstrate competency with grade two standard literary Braille code by successful completion of a test approved by the state board of education pursuant to WAC 180-82-130.

(6) Classified staff shall present evidence of skills and knowledge necessary to meet the needs of students with disabilities, and shall be supervised consistent with WAC 392-172-045 (4)(a)(iii). Districts shall have procedures that ensure that classified staff receive training to meet state recommended core competencies pursuant to RCW 28A.415.310.

(7) General education classroom personnel providing specially designed instruction defined in WAC 392-172-045 (4)(a)(iii) pursuant to a properly formulated individual education program may be paid from state or federal special education excess cost funds if the district has

in place a cost allocation plan which meets the requirements established by the superintendent of public instruction.

[Statutory Authority: RCW 28A.155.090(7). 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-200, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-200, filed 10/11/95, effective 11/11/95.]

WAC 392-172-202 Emergency—Temporary out-of-endorsement assignment. In order to temporarily assign classroom teacher without a special education endorsement to a special education position, the district or other public agency must keep written documentation on the following:

(1) The district or other public agency must make one or more of the following factual determinations:

(a) The district or other public agency was unable to recruit a teacher with the proper endorsement who was qualified for the position;

(b) The need for a teacher with such an endorsement could not have been reasonably anticipated and the recruitment of such a classroom teacher at the time of assignment was not reasonably practicable; and/or

(c) The reassignment of another teacher within the district or other public agency with the appropriate endorsement to such assignment would be unreasonably disruptive to the current assignments of other classroom teachers or would have an adverse effect on the educational program of the students assigned such other classroom teachers.

(2) Upon determination by a school district that one or more of these criteria can be documented, and the district determines that a teacher has the competencies to be an effective special education teacher but does not have endorsement in special education, the district can so assign the teacher to special education. The teacher so assigned must have completed six semester hours or nine quarter hours of course work which are applicable to an endorsement in special education. The following requirements apply:

(a) A designated representative of the district and any such teacher shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

(b) Such teachers shall not be subject to nonrenewal or probation based on evaluations of their teaching effectiveness in the out-of-endorsement assignments;

(c) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned; and

(d) The assignment of such teachers for the previous school year shall be reported annually to the state board of education by the employing school district as required by WAC 180-16-195. Included in the report shall be the number of teachers in out-of-endorsement assignments and the specific assistance being given to the teacher.

(3) An emergency out-of-endorsement assignment by the district or other public agency is only valid for one school year.

[Statutory Authority: RCW 28A.155.090(7). 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-202, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-202, filed 10/11/95, effective 11/11/95.]

Program Standards—Transportation—Facilities—Comparability

WAC 392-172-204 Transportation. (1) Methods. Transportation options for special education students shall include the following categories and shall be exercised in the following sequence:

(a) A scheduled school bus;

(b) Contracted transportation, including public transportation; and

(c) Other transportation arrangements, including that provided by parents. Board and room cost in lieu of transportation may be provided whenever the above stated transportation options are not feasible because of the need(s) of a special education student or because of the unavailability of adequate means of transportation, in accordance with rules of the superintendent of public instruction.

(2) Welfare of the student. The transportation of a special education student shall be in accordance with rules of the superintendent of public instruction governing transportation by public school districts and other public agencies.

(3) Bus aides and drivers. Training and supervision of bus aides and drivers shall be the responsibility of the school district or other public agency superintendent or designee.

(4) Special equipment. Special equipment may include lifts, wheelchair holders, restraints, and two-way radios. All such special equipment shall comply with specifications contained in the specifications for school buses as now or hereafter established by the superintendent of public instruction.

(5) Transportation time on bus. Wherever reasonably possible, no student should be required to ride more than sixty minutes one way.

(6) Transportation for state residential school students to and from the residential school and the sites of the educational program shall be the responsibility of the department of social and health services and each state residential school pursuant to law.

(7) Transportation for a state residential school student, including students attending the state school for the deaf and the state school for the blind, to and from such school and the residency of such student shall be the responsibility of the district of residency only if the student's placement was made by such district or other public agency pursuant to an interagency agreement—i.e., an appropriate placement in the least restrictive environment.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-204, filed 10/11/95, effective 11/11/95.]

WAC 392-172-208 Comparable facilities. If a school district or other public agency, in compliance with this chapter, operates a facility that is identifiable as being for special education students, the district or other public agency shall assure that the facility and the services and activities provided in the facility are comparable in quality to the school district and other public agency's facilities, services, and activities for students who are not disabled.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-208, filed 10/11/95, effective 11/11/95.]

WAC 392-172-210 Program length. The length of the education program for special education students shall be at least as long as the education program for students who are not disabled in terms of both the number of school days in the general school year and the average number of hours per school day. If a special education student cannot attend school a full school day, the reason shall be documented in his or her records and addressed in the individualized education program. The program length for a student during an extended school year shall be determined by the student's individualized education program.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-210, filed 10/11/95, effective 11/11/95.]

WAC 392-172-212 Health or safety standards. The superintendent of public instruction and districts shall comply with any federal health or safety requirements that apply to facilities used under Part B of Individuals with Disabilities Education Act.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-212, filed 10/11/95, effective 11/11/95.]

Home/Hospital Instruction

WAC 392-172-218 Home/hospital instruction. Home or hospital instruction shall be provided to both special education students and other students who are unable to attend school for an estimated period of four weeks or more because of physical disability or illness. As conditions to such services, the parent(s) of a student or the adult student shall request the services and provide a written statement to the school district or other public agency from a qualified medical practitioner that states the student will not be able to attend school for an estimated period of at least four weeks. A student who is not otherwise disabled pursuant to WAC 392-172-035 who qualifies pursuant to this subsection shall be deemed "disabled" only for the purpose of home/hospital instructional services and funding and may not otherwise qualify as a special education student for the purposes of generating state or federal special education funds. A school district or other public agency shall not pay the cost of the statement from a qualified medical practitioner for the purposes of qualifying a student for home/hospital instructional services pursuant to this section.

Home/hospital instructional services funded in accordance with the provisions of this section shall not be used for the initial or ongoing delivery of services to special education students. It shall be limited to placement as is deemed necessary to provide temporary intervention as a result of a physical disability or illness.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-218, filed 10/11/95, effective 11/11/95.]

School District Placements for Provision of FAPE

WAC 392-172-219 Applicability. The provisions of WAC 392-172-220 through 392-172-226 apply only to special education students who are, or have been placed in, or referred to a nonpublic or public school agency by a school district as a means of providing special education and related services.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-219, filed 12/1/99, effective 1/1/00.]

WAC 392-172-220 Contractual services. School districts shall be authorized to:

(1) Enter into interdistrict agreements with another school district(s) or other public agencies; or

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(2) Contract with nonpublic and public agencies for special education and related services for special education students if the school district establishes that it cannot provide an appropriate education for the special education student within the district.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-220, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-220, filed 10/11/95, effective 11/11/95.]

WAC 392-172-222 Approval of nonpublic agencies. (1) A school district or other public agency shall not award a contract to a nonpublic agency to provide special education to a special education student until the state board of education approves the nonpublic agency.

(2) The school district or other public agency shall notify the office of superintendent of public instruction, in writing, of their intent to enroll a student and/or contract with a nonpublic agency.

(3) The office of superintendent of public instruction shall provide the agency named with the procedures/application for nonpublic agency approval, which shall consist of description of agency and services provided, assurances, personnel record, and fire and health inspection forms.

(4) Upon review of the completed application and an on-site visitation the superintendent of public instruction or designee shall recommend approval or disapproval of the agency to the state board of education.

(5) The superintendent of public instruction or designee shall make information regarding currently approved nonpublic agencies available to all school districts.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-222, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-222, filed 10/11/95, effective 11/11/95.]

WAC 392-172-224 School district or other public agency responsibility when contracting for the delivery of services in a public agency or approved nonpublic agency. Any school district or other public agency contracting with a public or approved nonpublic agency for special education and related services shall:

(1) Initiate and conduct a meeting with appropriate personnel and the student's parent(s) to develop the student's individualized education program. The district or other public agency shall ensure that a representative of the approved nonpublic or public agency attends the meeting or in some other way assure participation. Meetings to review or revise the student's individualized education program after the student has been placed shall be initiated and conducted by the approved nonpublic or public agency at the discretion of the school district or other public agency. The district or other public agency shall assure that both the parent(s) or the adult student and the public agency or approved nonpublic agency are represented in any decision concerning the student's individualized education program and agree to proposed changes in the program before those changes are implemented. The responsibility for compliance with this section lies with the school district or other public agency.

(2) Develop a written contract which shall include, but not be limited to, the following elements:

(a) Names of the parties involved;

(b) The name(s) of the special education student(s) for whom the contract is drawn;

(c) Location and setting of the services to be provided;

(d) Description of services provided, program administration and supervision;

(e) Designation of responsible parties;

(f) Charges and reimbursement—Billing and payment procedures;

(g) Total contract cost;

(h) School district and other public agency's responsibility for compliance with due process, individualized education program, and yearly review and determination of placement requirements; and

(i) Other contractual elements that may be necessary to assure compliance with state and federal rules.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-224, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-224, filed 10/11/95, effective 11/11/95.]

WAC 392-172-226 Residential educational services—Methods of payment. (1) If the delivery of services in a public or private residential educational program is necessary to provide special education and any necessary related services to a special education student, the program, including nonmedical care and room and board, must be at no cost to the parents of the student. Nothing in this chapter limits the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of a free appropriate public education to special education students in the state.

(2) Nothing in this chapter relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to special education students.

(3) Consistent with the IEP provisions in this chapter, the office of the superintendent of public instruction shall ensure that there is no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education and related services to the student is being determined.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-226, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-226, filed 10/11/95, effective 11/11/95.]

Parental Placements for Provision of FAPE

WAC 392-172-230 Placement of students by parents. If a special education student has a free appropriate public education available and the parents choose to place the student in a private school or facility, the public agency is not required by this chapter to pay for the student's education, including special education and related services, at the private school or facility. However, the public agency shall include that student in the population whose needs are addressed consistent with WAC 392-172-232 through 392-172-248.

Disagreements between a parent and a public agency regarding the availability of a program appropriate for the student, and the question of financial responsibility, are subject to the due process procedures of this chapter. Disagreements may also be resolved through the mediation process described in this chapter.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-230, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-230, filed 10/11/95, effective 11/11/95.]

WAC 392-172-231 Reimbursement for private school placement. (1) If the parents of a special education student, who previously received special education and any necessary related services under the authority of a school district or other public agency, enroll the student in a private preschool, elementary or secondary school without the consent of or referral by a school district or other public agency, a court or a hearing officer may require a school district or other public agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that a school district or other public agency had not made a free appropriate public education available to the student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by a school district or other public agency.

(2) The cost of reimbursement may be reduced or denied if:

(a) At the most recent individualized education program meeting that the parents attended prior to removal of the student from the public school, the parents did not inform the team that they were rejecting the placement proposed by a school district or other public agency to provide a free appropriate public education to their student, including stating their concerns and their intent to enroll their student in a private school at public expense; or

(b) At least ten business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to a school district or other public agency of the information described in (a) of this subsection; or

(c) If, prior to the parents' removal of the student from the public school, a school district or other public agency informed the parents, through the notice requirements described in this chapter, of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or

(d) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(3) Notwithstanding the notice requirement in subsection (2)(a) and (b) of this section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if:

(a) The parent is illiterate and/or cannot write in English;

(b) Compliance with the notice requirements of this section would likely result in physical or serious emotional harm to the student;

(c) The school district or other public agency prevented the parent from providing the notice; or

(d) The parent had not received notice of the requirement to notify a school district or other public agency of the information required in subsection (2)(a) and (b) of this section.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-231, filed 12/1/99, effective 1/1/00.]

Students Enrolled in Private Schools by Parent

WAC 392-172-232 Definition—"Private school special education student(s)." For the purpose of WAC 392-172-23300 through 392-172-248 "private school special education student(s)" means special education students who are not full or part time enrolled in the public school or other public agency for the purpose of receiving special education and related services, who are enrolled in private schools or agencies, and whose private school enrollment is not the result of a contractual arrangement between a public school district or other public agency and the private school or agency. "Resident special education students" means those students who reside within school district or other public agency boundaries, consistent with chapter 28A.225 RCW.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-232, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-232, filed 10/11/95, effective 11/11/95.]

WAC 392-172-23300 Child count. (1) Each school district or other public agency shall:

(a) Consult with representatives of private school students in deciding how to conduct the annual count of the number of private school special education students; and

(b) Ensure that the count is conducted on December 1 of each year.

(2) The child count must be used to determine the amount that the school district or other public agency must spend on providing special education and related services to private school special education students, described in WAC 392-172-232, in the next subsequent fiscal year.

(3) State and local educational agencies are not prohibited from providing services to private school special education students in excess of those required by this section consistent with state law or local policy.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-23300, filed 12/1/99, effective 1/1/00.]

WAC 392-172-23305 Expenditures. Each school district or public agency shall spend a proportionate amount of federal funds on providing special education and related services to private school special education students as follows:

(1) For students aged three through twenty-one, an amount that is the same proportion of the school district's or other public agency's total subgrant under Part B of the Individuals with Disabilities Education Act as the number of private school special education students aged three through twenty-one residing in its jurisdiction is to the total number of special education students in its jurisdiction aged three through twenty-one; and

(2) For students aged three through five, an amount that is the same proportion of the school district's or other public agency's total subgrant under the school district's or other agency's preschool grant under section 619 of the Individuals with Disabilities Education Act as the number of private school special education students aged three through five residing in its jurisdiction is to the total number of special education students in its jurisdiction aged three through five.

(3) Expenditures for child find activities described in WAC 392-172-100 may not be considered in determining whether the school district of other public agency has met the requirements of this section.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-23305, filed 12/1/99, effective 1/1/00.]

WAC 392-172-23600 Determination (of needs, numbers of students and types) of services. (1) No private school special education student, as defined in WAC 392-172-232, has an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school. Decisions about the services that will be provided to private school special education students under WAC 392-172-232 through 392-172-248 must be made in accordance with this section.

(2) Each school district or other public agency shall consult, in a timely and meaningful way, with appropriate representatives of private school special education students in light of the funding under WAC 392-172-23305, the number of private school special education students, the needs of private school special education students, and their location to decide:

(a) Which students will receive services;

(b) What services will be provided;

(c) How and where the services will be provided; and

(d) How the services provided will be evaluated.

(3) Each school district or other public agency shall give appropriate representatives of private school special education students a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section.

(4) The consultation required by this section shall occur before the school district or other public agency makes any decision that affects the opportunities of private school special education students to participate in services under WAC 392-172-232 through 392-172-248.

(5) The school district or other public agency shall make the final decision with respect to the services to be provided to eligible private school students.

(6) If a special education student is enrolled in a religious or other private school and will receive special education or related services from a school district or other public agency, the district or agency shall:

(a) Initiate and conduct meetings to develop, review, and revise a services plan for the student, in accordance with WAC 392-172-23605; and

(b) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the school district or other public agency shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-23600, filed 12/1/99, effective 1/1/00.]

WAC 392-172-23605 Services provided. (1) The services provided to private school special education students, as defined in WAC 392-172-232, must be provided by personnel meeting the same standards as personnel providing services in the public schools.

(2) Private school special education students may receive a different amount of services than special education students in public schools.

(3) No private school special education student is entitled to any service or to any amount of a service the student would receive if enrolled in a public school.

(4) Each private school special education student who has been designated to receive services under WAC 392-172-23600 must have a services plan that describes the specific special education and related services that the school district or other public agency will provide to the student in light of the services that the district or agency has determined, through the process described in WAC 392-172-23300 and 392-172-23600, it will make available to private school special education students.

(5) The services plan must, to the extent appropriate:

(a) Meet the requirements of WAC 392-172-160 with respect to the services provided;

(b) Be developed, reviewed, and revised consistent with WAC 392-172-156, 392-172-158, and 392-172-161.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-23605, filed 12/1/99, effective 1/1/00.]

WAC 392-172-23610 Location of services and transportation. (1) Services provided to private school special education students, as defined in WAC 392-172-232, may be provided on-site at a student's private school, consistent with WAC 392-172-238.

(2) If necessary for the student to benefit from or participate in the services provided under this section, a private school special education student must be provided transportation:

(a) From the student's school or the student's home to a site other than the private school; and

(b) From the service site to the private school, or to the student's home.

(3) School districts or other public agencies are not required to provide transportation from the student's home to the private school.

(4) The cost of the transportation described in subsection (2) of this section may be included in calculating whether the school district or other public agency has met the requirement of WAC 392-172-23305.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-23610, filed 12/1/99, effective 1/1/00.]

WAC 392-172-238 Service arrangements. (1) Special education services to private school students may be provided through such arrangements as dual enrollment pursuant to chapter 392-134 WAC.

(2) No services, material, or equipment of any nature shall be provided to or on the site of any private school or agency subject to sectarian (i.e., religious) control or influence.

(3) Special education students enrolled in any private school or agency subject to sectarian control or influence shall be provided services in a manner that:

(a) Maintains a physical and administrative separation between the private and the public school programs; and

(b) Does not benefit the private school at public expense, e.g., pursuant to dual enrollment or shared time arrangements in accordance with chapter 392-134 WAC.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-238, filed 10/11/95, effective 11/11/95.]

WAC 392-172-239 Complaints. (1) The procedures under WAC 392-172-350 et seq., do not apply to complaints that a school district or other public agency has failed to meet the requirements of WAC 392-172-232 through 392-172-248, including the provision of services indicated on the student's individualized education program.

(2) The procedures under WAC 392-172-350 et seq. do apply to complaints that a school district or other public agency has failed to meet the requirements under child find, including evaluation and reevaluation procedures under this chapter.

(3) Complaints that the state, or a school district or other public agency, has failed to meet the requirements of WAC 392-172-232 through 392-172-248 may be filed under the procedures in WAC 392-172-324 et seq.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-239, filed 12/1/99, effective 1/1/00.]

WAC 392-172-240 Personnel in private schools and agencies. (1) School district or other public agency personnel may be made available to nonsectarian private schools and agencies only to the extent necessary to provide services required by the special education student if those services are not normally provided by the private school.

(2) Each school district or other public agency providing services to students enrolled in nonsectarian private schools or agencies shall maintain continuing administrative control and direction over those services.

(3) Services to private school special education students shall not include the payment of salaries of teachers or other employees of private schools or agencies, except for services performed outside regular hours of the school day and under public supervision and control.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-240, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-240, filed 10/11/95, effective 11/11/95.]

WAC 392-172-242 Equipment, property and supplies—Construction. (1) Equipment and supplies used with special education students in a private school or agency may be placed on nonsectarian private school or agency premises for the period of time necessary for the program, but title to and administrative control over all equipment property and supplies must be retained and exercised by the school district or other public agency.

(2) Records shall be kept of equipment and supplies and an accounting made of the equipment and supplies which shall assure that the equipment is used solely for the purposes of the program. Equipment and supplies placed in private schools must be able to be removed from the private school without remodeling the private school facility.

(3) The equipment and supplies shall be removed from the private school or agency if necessary to avoid its being used for other purposes or if it is no longer needed for the purposes of the program or project.

(4) Funds shall not be used for repairs, minor remodeling, or to construct facilities for private schools or agencies.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-242, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-242, filed 10/11/95, effective 11/11/95.]

WAC 392-172-244 Prohibition of segregation. Programs or projects carried out in public facilities, and involving joint participation by special education students otherwise enrolled in private schools or agencies and special education students enrolled in public schools, shall not include classes that are separated on the basis of school enrollment or the religious affiliations of the students.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-244, filed 10/11/95, effective 11/11/95.]

WAC 392-172-246 Funds and property not to benefit private schools. Public funds provided and property derived from those funds shall not benefit any private school or agency.

A school district shall use funds provided under Part B of the IDEA to meet the special education and related services needs of special education students enrolled in private schools, but not for:

(1) The needs of a private school; or

(2) The general needs of the students enrolled in the private school.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-246, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-246, filed 10/11/95, effective 11/11/95.]

WAC 392-172-248 Existing level of instruction. Provisions for serving private school special education students shall not include the financing of the existing level of instruction in a private school or agency.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-248, filed 10/11/95, effective 11/11/95.]

Procedural Safeguards

WAC 392-172-300 General responsibility of public agencies. Each school district and public agency shall establish, implement and maintain procedural safeguards that meet the requirements of 34 CFR 300.500 through 34 CFR 300.529.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-300, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-300, filed 10/11/95, effective 11/11/95.]

Notice Requirements—General

WAC 392-172-302 When prior written notice must be given. A school district or other public agency shall give prior written notice in accordance with WAC 392-172-306 to the parent(s) of a student (or to the adult student) a reasonable time before the school district or other public agency:

(1) Proposes or refuses to initiate or change the identification, evaluation, educational placement of the student or provision of FAPE to the student.

(2) If the notice required under this section relates to an action proposed by a district or other public agency that also requires parental consent under WAC 392-172-185 and 392-172-304, notice may be given at the same time parental consent is being requested.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-302, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-302, filed 10/11/95, effective 11/11/95.]

WAC 392-172-304 Parent consent. (1) Informed parental consent must be obtained in writing (using mediation if appropriate), or denial of consent must be overridden by a due process hearing before:

(a) Conducting an initial evaluation, or reevaluation consistent with WAC 392-172-185; and

(b) Providing initial special education and any necessary related services to a special education student.

(2) Consent for initial evaluation may not be construed as consent for initial placement described in this section.

(3) Parental consent is not required before:

(a) Reviewing existing data as part of an evaluation or reevaluation; or

(b) Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

(4) A public agency may not use a parent's refusal to consent to one service or activity under this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this chapter.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-304, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-304, filed 10/11/95, effective 11/11/95.]

WAC 392-172-306 Contents of prior written notice. (1) The notice required by WAC 392-172-302 shall include:

(a) A statement that the parents of a special education student have protection under the procedural safeguards of this chapter. If a copy of the procedural safeguards are not included with the prior written notice, the district or other public agency shall include a statement that describes the means by which a copy of a description of the procedural safeguards can be obtained;

(b) A description of the action proposed or refused by the school district or other public agency, an explanation of why the district or other public agency proposes or refuses to take the action, and a description of any other options the district or other public agency considered and the reasons why those options were rejected;

(c) A description of each evaluation procedure, test, record, or report the district or other public agency used as a basis for the proposal or refusal;

(d) A description of any other factors which are relevant to the school district and other public agency's proposal or refusal;

(e) A description of any evaluation procedures the school district or other public agency proposes to conduct; and

(f) Sources for parents to contact to obtain assistance in understanding the procedural safeguards provisions of this chapter.

(2) The notice shall be:

(a) Written in language understandable to the general public; and

(b) Provided in the native language of the parent or adult student or other mode of communication used by the parent or adult student, unless it is clearly not feasible to do so.

(3) If the native language or other mode of communication of the parent or adult student is not a written language, the district or other public agency shall take steps to assure that:

(a) The notice is translated orally or by other means to the parent or adult student in his or her native language or other mode of communication;

(b) The parent or adult student understands the content of the notice; and

(c) There is written evidence that the requirements in (a) and (b) of this subsection have been met.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-306, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-306, filed 10/11/95, effective 11/11/95.]

WAC 392-172-307 Procedural safeguards. (1) A copy of the procedural safeguards available to the parents of a special education student shall be given to the parents, at a minimum:

(a) Upon initial referral for evaluation;

(b) Upon each notification of an individualized education program meeting;

(c) Upon reevaluation of the student;

(d) Upon receipt of a request for due process; and

(e) Upon notification of a parent that a school district or other public agency intends to take disciplinary action that constitutes a change of placement.

(2) The procedural safeguards notice must include a full explanation of all of the procedural safeguards available, listed in 34 CFR 300.504 (4)(b), including and relating to:

(a) Independent educational evaluation;

(b) Prior written notice;

(c) Parental consent;

(d) Access to educational records;

(e) Opportunity to present complaints to initiate due process hearings;

(f) The student's placement during pendency of due process proceedings;

(g) Procedures for students who are subject to placement in an interim alternative educational setting;

(h) Requirements for unilateral placement by parents of students in private schools at public expense;

(i) Mediation;

(j) Due process hearings, including requirements for disclosure of evaluation results and recommendations;

(k) Civil actions;

(l) Attorneys' fees; and

(m) State complaint procedures, including a description of how to file a complaint and the timelines under those procedures.

(3) The notice shall meet the requirements of WAC 392-172-306 (2) and (3).

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-307, filed 12/1/99, effective 1/1/00.]

Surrogate Parents

WAC 392-172-308 Surrogate parents. (1) Each school district or other public agency providing a special education program to a nonadult special education student shall assure that the rights of the nonadult student are protected when:

(a) No parent, as defined in WAC 392-172-035(5), can be identified;

(b) The school district or other public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(c) The student is a ward of the state. A student is a ward of the state if (i) parental rights have been terminated and no guardian has been appointed or (ii) the student is found dependent under chapter 13.34 RCW. If the child is found dependent and is placed with the parent or with relatives, those persons may be considered a parent under the definition of WAC 392-172-035(5).

(2) The duty of a school district or other public agency under this section includes the assignment of a person to act as a surrogate for the parents. This duty includes the establishment of a method:

(a) For determining whether a nonadult student needs a surrogate parent; and

(b) For assigning a surrogate parent to the student.

(3) Each school district or other public agency shall ensure that a person selected as a surrogate:

(a) Has no interest that conflicts with the interests of the student he or she represents; and

(b) Has knowledge and skills that assure adequate representation of the student.

(4) (a) A person assigned as a surrogate may not be an employee of the office of superintendent of public instruction, a school district or other public agency which is involved in the education or care of the student; and

(b) A person who otherwise qualifies as a surrogate parent pursuant to this section is not an "employee" of the school district or other public agency solely because he or she is paid by the school district and/or agency to serve as a surrogate parent.

(c) A public agency may select as a surrogate, a person who is an employee of a nonpublic agency that only provides noneducational care for the student and who meets the standards in subsection (3) of this section.

(d) A foster parent may be appointed as a surrogate parent if he or she meets the qualifications of subsection (3) of this section and is willing to make educational decisions on behalf of the student.

(5) Responsibilities. A surrogate parent may represent the student in all matters relating to the identification, evaluation, educational placement of the student and the provision of FAPE to the student.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-308, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-308, filed 10/11/95, effective 11/11/95.]

WAC 392-172-309 Transfer of parental rights at age of majority. (1) Consistent with RCW 26.28.010 and 26.28.015, when a special education student reaches the age of eighteen, unless declared incapacitated as to person under chapter 11.88 RCW, the following shall occur:

(a) A school district or other public agency shall provide any notice required under the chapter to both the student and the parents; and

(b) All other rights accorded to parents under Part B of the Individuals with Disabilities Education Act transfer to the student.

(2) All rights accorded to parents under Part B of the Individuals with Disabilities Education Act transfer to students at the age of majority who are incarcerated in an adult or juvenile, state, or local correctional institution.

(3) Whenever a school district or other public agency transfers rights under this section, they shall notify the individual and the parents of the transfer of rights.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-309, filed 12/1/99, effective 1/1/00.]

Mediation

WAC 392-172-310 Mediation—Purpose. The purpose of mediation is to offer both the parent and the school district or other public agency an optional alternative to a formal due process hearing. Mediation requires the consent and agreement of both parties. Mediation cannot be used to deny or delay access by a parent to a due process hearing under this chapter, or to deny any other rights afforded under this chapter. Mediation is used to resolve disagreements concerning the identification, evaluation, educational placement of the special education student or provision of FAPE to the special education student. Mediation may be terminated by either party at any time during the process. Mediation shall be available whenever a hearing is requested under this chapter.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-310, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-310, filed 10/11/95, effective 11/11/95.]

WAC 392-172-312 Mediation—Definition. Mediation is a dispute resolution process in which an impartial mediator assists both parties in reaching a mutually acceptable agreement on the educational needs of a special education student. The primary participants in the mediation process are the parent(s), school district or other public agency representative(s), and mediator. The process is voluntary, confidential, and informal. It is a collaborative process, conducted in a nonadversarial manner. Mediation services are provided by the office of superintendent of public instruction at no cost to either party, including the costs of meetings described in WAC 392-172-317. The office of superintendent of public instruction will provide mediation services for individuals whose primary language is not English unless it is clearly not feasible to do so. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-312, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-312, filed 10/11/95, effective 11/11/95.]

WAC 392-172-313 Mediators—Qualified and impartial. (1) Mediation is conducted by qualified and impartial mediators who are trained in effective mediation techniques.

(2) The office of superintendent of public instruction shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(3) An individual who serves as a mediator:

(a) May not be an employee of:

(i) Any school district or any state agency described under WAC 392-172-035(6); or

(ii) A state education agency that is providing direct services to a student who is the subject of the mediation process; and

(b) Shall not have a personal or professional conflict of interest.

(4) A person who otherwise qualifies as a mediator is not an employee of a school district or other public agency solely because he or she is paid by the agency to serve as a mediator.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-313, filed 12/1/99, effective 1/1/00.]

WAC 392-172-314 Request for mediation services. (1) To access the state-wide mediation system, a request for mediation services may be made in writing or verbally to administrative agents for the office of superintendent of public instruction. Written confirmation of the request shall be provided to both parties by an intake coordinator and a mediator shall be assigned to the case.

(2) If a mediator is not selected on a random (e.g., a rotation) basis from the list described in WAC 392-172-313, both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-314, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-314, filed 10/11/95, effective 11/11/95.]

WAC 392-172-316 Written mediation agreement—Mediation discussions. (1) Agreements reached through the mediation process shall be documented in writing and signed by both parties. Solutions to the issue(s) raised through the mediation process shall not be in conflict with state and federal laws or regulations. The parties shall be given a copy of the written mediation agreement. A copy of the mediation agreement shall also be filed by the mediator with the office of superintendent of public instruction.

(2) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to and participants in the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-316, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-316, filed 10/11/95, effective 11/11/95.]

WAC 392-172-317 Meeting to encourage mediation. (1) A school district or other public agency may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party:

(a) Who is under contract with a parent training and information center or community parent resource center in the state established under the Individuals with Disabilities Education Act or an appropriate alternative dispute resolution entity; and

(b) Who would explain the benefits of the mediation process, and encourage the parents to use the process.

(2) A school district or other public agency may not deny or delay a parent's right to a due process hearing under this chapter if the parent fails to participate in the meeting described in this section.

(3) A school district or other public agency shall submit its procedures for implementing this section to the office of superintendent of public instruction for review and approval, including projected costs for carrying out the process.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-317, filed 12/1/99, effective 1/1/00.]

Citizen Complaint Process

WAC 392-172-324 Definition—Complaint. As used in this chapter, the term "complaint" means an allegation, by the complainant, that the state, a local school district or other public agency, an educational service district, or other subgrantee receiving federal funds (or receiving state funds to carry out a federal requirement), including private schools and facilities where students are placed on a contractual basis, has violated a federal statute or regulation or a state regulation that applies to a federal program covered under this chapter.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-324, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-324, filed 10/11/95, effective 11/11/95.]

WAC 392-172-326 Definition—Other subgrantee. As used in this chapter, the term "other subgrantee" means the government, for profit or nonprofit, or other legal entity to which the state as grantee awards a subgrant or the district or public agency grants a contract, and which is accountable to the state for the use of the funds provided. The subgrantee is the entire legal entity even if only a particular component of the entity is designated in the subgrant award document.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-326, filed 10/11/95, effective 11/11/95.]

WAC 392-172-328 Informing citizens about complaint procedures. The superintendent of public instruction shall inform parents and other interested individuals about the citizen complaint procedures in this chapter. Specific actions to be taken by the superintendent of public instruction include:

(1) Widely disseminating copies of the state's procedures to parents and other interested individuals, including protection and advocacy agencies, parent training and information centers,

independent living centers, and other appropriate entities;

(2) Conducting in-service training sessions on the complaint process through educational service districts; and

(3) Including information about the system in state-wide conferences.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-328, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-328, filed 10/11/95, effective 11/11/95.]

WAC 392-172-329 Remedies for denial of appropriate services. In resolving a complaint in which it has found a failure to provide appropriate services, the office of the superintendent of public instruction pursuant to its general supervisory authority under Part B of the IDEA, must address:

(1) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student; and

(2) Appropriate future provision of services for all special education students.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-329, filed 12/1/99, effective 1/1/00.]

WAC 392-172-330 Right to register a complaint. Any individual or organization, including an organization or individual from another state, may register a signed written complaint.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-330, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-330, filed 10/11/95, effective 11/11/95.]

WAC 392-172-332 Contents of complaint. (1) A written complaint filed under this chapter shall include:

(a) A statement that an educational entity, which includes the state, a local school district or other public agency, an educational service district, or other subgrantee has violated one or more requirements of federal statutes or regulations or state regulations that apply to Part B of the IDEA;

(b) The facts on which the statement is based;

(c) The name and address of the complainant; and

(d) The name and address of the educational entity.

(2) The complaint must be signed.

(3) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-332, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-332, filed 10/11/95, effective 11/11/95.]

WAC 392-172-334 Procedure for filing a complaint. The procedure for filing a complaint shall be as follows:

(1) All complaints alleging a violation by a local school district or other public agency, an educational service district, the state or other subgrantee shall be filed directly with the superintendent of public instruction.

(2) The superintendent of public instruction, upon receipt of a signed, written complaint against a local school district or other public agency, an educational service district, or other subgrantee, shall refer the complaint to the educational entity for action pursuant to this chapter. A complaint against the state shall be investigated pursuant to WAC 392-172-344.

(3) Receipt of a complaint by the superintendent of public instruction activates a time limit not to exceed sixty calendar days unless an extension of the time limit is approved by the superintendent of public instruction on the basis of exceptional circumstances relative to a particular complaint.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-334, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-334, filed 10/11/95, effective 11/11/95.]

WAC 392-172-336 Designation of responsible employee. The chief officer of each local school district or other public agency, an educational service district, or other subgrantee shall designate at least one employee to monitor and coordinate the entity's compliance with this chapter. Such employee shall also be charged with the responsibility for investigating any complaint(s) communicated to the superintendent of public instruction pursuant to WAC 392-172-334.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-336, filed 10/11/95, effective 11/11/95.]

WAC 392-172-338 Investigation of and response to complaints against a school district or other public agency, educational service district, or other subgrantee. Investigation of and response to a complaint shall be as follows:

(1) Upon receipt of a properly filed complaint, the superintendent of public instruction shall send a copy of the complaint to the educational entity, for their investigation of the alleged violations.

(2) The educational entity shall investigate the complaint. The responsible official of the educational entity shall respond in writing to the superintendent of public instruction, and include documentation of the investigation, no later than twenty calendar days after the date of receipt by the entity of such complaint.

(3) The response to the superintendent of public instruction shall clearly state either:

(a) That the educational entity denies the allegations contained in the complaint and the basis for such denial; or

(b) Proposes reasonable corrective action(s) deemed necessary to correct the violation.

(4) Upon request, the superintendent of public instruction shall provide the complainant a copy of the entity's response to the complaint.

(5) The superintendent of public instruction will provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

(6) Within thirty calendar days, and upon review of all relevant information including, if necessary, information obtained through an independent on-site investigation by the superintendent of public instruction, the superintendent of public instruction will make an independent determination as to whether the public agency is violating a requirement of Part B of the Individuals with Disabilities Education Act or of this chapter.

(7) Consistent with the provisions of WAC 392-172-320 through 392-172-346, the superintendent of public instruction shall issue a written decision to the complainant that addresses each allegation in the complaint including findings of fact, conclusions and the reasonable corrective measures deemed necessary to correct any violation. Corrective measures necessary to resolve a complaint shall be instituted as soon as possible but in no event later than thirty calendar days following the date of the decision, unless otherwise agreed to, or for good cause.

(8) If compliance by a local school district or other public agency, educational service district, or other subgrantee is not achieved pursuant to subsection (7) of this section, the superintendent of public instruction shall initiate fund withholding, fund recovery, or any other sanction deemed appropriate.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-338, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-338, filed 10/11/95, effective 11/11/95.]

WAC 392-172-342 Complaints against the superintendent of public instruction—Designation of responsible employee(s). A complaint alleging a violation by the superintendent of public instruction shall be filed directly with the superintendent of public instruction in the form specified in WAC 392-172-332.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-342, filed 10/11/95, effective 11/11/95.]

WAC 392-172-344 Complaints against the superintendent of public instruction—Investigation of and response to complaints. (1) The staff responsible for investigating the alleged violation shall commence investigation within ten days of receipt of the complaint by the superintendent of public instruction.

(2) Investigation by the superintendent of public instruction may include on-site investigations as appropriate.

(3) Upon completion of the investigation, investigating staff shall provide the superintendent of public instruction with a written report on the results of the investigation.

(4) The superintendent of public instruction shall respond in writing to the complainant as soon as possible but in no event later than sixty calendar days after the date of receipt of such complaint by the superintendent of public instruction.

(5) The response shall clearly state either:

(a) That the complaint is without merit, the allegations are denied, and the basis for such denial; or

(b) The reasonable corrective measures deemed necessary to correct any violation. Any such corrective measures deemed necessary shall be instituted as soon as possible but in no event later than thirty calendar days following the date of the response to the complainant.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-344, filed 10/11/95, effective 11/11/95.]

WAC 392-172-348 Complaints and due process hearings. (1) If a written complaint is received that is also the subject of a due process hearing under this chapter or contains multiple issues, of which one or more are part of that hearing, the office of the superintendent of public instruction must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in this section.

(2) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:

(a) The hearing decision is binding; and

(b) The office of the superintendent of public instruction must inform the complainant to that effect.

(3) A complaint alleging a public agency's failure to implement a due process decision must be resolved by the office of the superintendent of public instruction.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-348, filed 12/1/99, effective 1/1/00.]

Hearings—General

WAC 392-172-350 Right to initiate—Purposes. (1) Hearings conducted in accordance with WAC 392-172-350 through 392-172-360 may be initiated in the following cases for the purposes stated:

(a) The parent(s) of a student (or an adult student) or a school district or other public agency may initiate a hearing to challenge or to show the appropriateness of a proposal or refusal by the school district or other public agency to initiate or change:

(i) The identification of the student;

(ii) The evaluation of the student;

(iii) The educational placement of the student; or

(iv) The provision of FAPE to the student pursuant to this chapter;

(b) A school district or other public agency may initiate a hearing to show that its evaluation of a student is appropriate if the student's parent(s) or adult student disagrees with the evaluation results and requests an independent educational evaluation, pursuant to WAC 392-172-150.

(2) A request by a student's parent(s) or adult student for a hearing pursuant to this section shall:

(a) Be in writing, specify the district or other public agency and the school the student attends, explain the concerns of the parent(s) or adult student in general or specific terms, and provide other information regarding the request for hearing described in WAC 392-172-351; and

(b) Be mailed or provided directly to the Office of Superintendent of Public Instruction, Office of Legal Services, Old Capitol Building, P.O. Box 47200, Olympia, Washington 98504. A copy of the request for hearing should also be given to the district or other public agency, consistent with WAC 392-172-351.

(3) A request by a school district or other public agency for a hearing pursuant to this section shall:

(a) Be in writing;

(b) Be mailed or provided directly to Office of Superintendent of Public Instruction, Office of Legal Services, Old Capitol Building, P.O. Box 47200, Olympia, Washington 98504. A copy of such request, including attachments shall be mailed to the student's parent(s) or adult student;

(c) Include a copy of the notice to parent(s) or adult student as required by WAC 392-172-302. If the hearing request by the district or other public agency is in response to a request for an independent educational evaluation pursuant to WAC 392-172-150, the school district or other public agency shall attach documentation of the parent's request.

(4) A notice of a hearing requested by a student's parent(s) or adult student or initiated by a school district or other public agency pursuant to this section shall be provided by the hearing officer and shall include, but not necessarily be limited to:

(a) The date, time, and place of the hearing;

(b) The issues to be addressed at the hearing to the extent the issues have been identified at the time of the notice;

(c) The rights, procedures, and other matters set forth in WAC 392-172-352 through 392-172-364; and

(d) The right of the parent(s) or adult student to seek an independent evaluation at public expense pursuant to WAC 392-172-150.

(5) The forty-five day time line for completing the hearing process shall begin on the day the superintendent receives the written request for a due process hearing.

(6) When a hearing is initiated under this section, the office of superintendent of public instruction shall inform the parents of the availability of mediation described in WAC 392-172-310 et seq.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-350, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-350, filed 10/11/95, effective 11/11/95.]

WAC 392-172-351 Request for hearing, notice by parent. (1) The school district or other public agency must have procedures that require the parent of a special education student or the attorney representing the student to provide notice (which must remain confidential) to the school district or other public agency in a request for a hearing to the office of superintendent of public instruction. The notice for a request for hearing must include:

(a) The name of the student;

(b) The address of the residence of the student;

(c) The name of the school the student is attending;

(d) A description of the nature of the problem of the student relating to the proposed initiation or change, including facts relating to the problem; and

(e) A proposed resolution of the problem to the extent known and available to the parents at the time.

(2) The office of superintendent of public instruction shall develop a model hearing request form to assist parents in filing a request for a due process hearing that includes the information required above.

(3) A school district or other public agency may not deny or delay a parent's right to a due process hearing for failure to provide the notice required in this section. However, failure to

provide the notice required in subsection (1) of this section may result in a reduction of attorneys' fees under WAC 392-172-362 (3)(e)(iv).

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-351, filed 12/1/99, effective 1/1/00.]

WAC 392-172-352 Hearing officers—Selection and expenses of—Parent assistance. (1) If a hearing is initiated pursuant to WAC 392-172-350:

(a) The hearing shall be conducted by and at the expense of the superintendent of public instruction.

(b) The superintendent of public instruction shall provide for a court reporter's stenographic record of all testimony and other oral hearing proceedings at the expense of the superintendent of public instruction: A court reporter's stenographic record need not be transcribed for any purpose except as provided or required in WAC 392-172-354 (1)(g) and (h).

(c) The superintendent of public instruction shall inform the parent(s) or adult student of any free or low-cost legal and other relevant services available in the area if:

(i) The parent or adult student requests the information; or

(ii) The school district or other public agency or the parent or adult student initiates a hearing.

(d) The hearing shall be conducted by a qualified person selected and appointed by the chief administrative law judge in the office of administrative hearings pursuant to chapter 10-08 WAC and shall be a person who:

(i) Is not an employee of a public agency which is involved in the education or care of the student; and

(ii) Does not have a personal or professional interest which would conflict with his or her objectivity in the hearing.

(2) A person who otherwise qualifies to conduct a hearing under this section is not an employee of the public agency solely because he or she is paid by the agency to serve as a hearing officer.

(3) The hearing shall be conducted in accordance with the provisions of WAC 392-101-005 unless modified by this chapter.

(4) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-352, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-352, filed 10/11/95, effective 11/11/95.]

WAC 392-172-354 Hearing rights. (1) Any party to a hearing initiated pursuant to WAC 392-172-350 has the right to:

(a) Be accompanied and advised by persons with special knowledge or training with respect to the problems of special education students;

(b) Be advised and/or represented by an attorney;

(c) Present evidence, including the opinion(s) of qualified experts, confront, cross-examine, and compel the attendance of witnesses;

(d) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing, or two business days if the hearing is expedited pursuant to WAC 392-172-38415 (1)(b);

(e) At least five business days (or two business days if the hearing is expedited pursuant to WAC 392-172-38415 (1)(b)) prior to a hearing conducted pursuant to this section, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing;

(f) A hearing officer may bar any party that fails to comply with (e) of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party;

(g) Obtain a written, or at the option of the parents, electronic verbatim record of the hearing at no cost to any party to a hearing; and

(h) Obtain written, or at the option of the parents, electronic findings of fact, decisions, conclusions of law and judgments. The state, after deleting any personally identifiable information, shall:

(i) Transmit those findings and decisions to the state advisory panel established under this chapter; and

(ii) Make those findings and decisions available to the public.

(2) Parents who are a party to a hearing have the right to have the student who is the subject of the hearing present.

(3) Parents (or adult students) who are a party to a hearing have the right to open the hearing to the public.

(4) The record of the hearing and the findings of fact and decisions described in this section shall be provided at no cost to parents.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-354, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-354, filed 10/11/95, effective 11/11/95.]

WAC 392-172-356 Time line for hearing officer's decision—Time and place of hearing. (1) Not later than forty-five days after the date of receipt of a request for a hearing pursuant to WAC 392-172-350:

(a) A final decision shall be reached in the hearing; and

(b) A copy of the decision shall be mailed to each of the parties.

(2) A hearing officer may grant specific extensions of time beyond the period set forth in subsection (1) of this section at the request of the parent(s) or school district or other public agency.

(3) Each hearing shall be conducted at a time and place which is reasonably convenient to the parent(s) and student involved.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-356, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-356, filed 10/11/95, effective 11/11/95.]

WAC 392-172-360 Final decision—Appeal to court of law. (1) A decision made in a hearing initiated pursuant to WAC 392-172-350 is final, unless modified or overturned by a court of law. Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under this chapter has the right to bring a civil action under section 615 (e)(2) of the Individuals with Disabilities Education Act. A civil action may be filed in either state or federal court.

(2) In any action brought under this section, the court:

(a) Shall receive the records of the administrative proceedings.

(b) Shall hear additional evidence at the request of a party.

(c) Shall grant the relief that the court determines to be appropriate basing its decision on the preponderance of the evidence.

(3) The district courts of the United States have jurisdiction of actions brought under section 615 of the Individuals with Disabilities Education Act without regard to the amount in controversy.

(4) Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of special education students, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Individuals with Disability Education Act, the procedures for a due process hearing in this chapter must be exhausted to the same extent as would be required had the action been brought under section 615 of the Individuals with Disabilities Education Act.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-360, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-360, filed 10/11/95, effective 11/11/95.]

WAC 392-172-362 Attorneys' fees. (1) Each public agency shall inform parents that in any action or proceeding under section 615 of the Individuals with Disabilities Education Act, courts in their discretion, may award parents reasonable attorneys' fees as part of the costs to the parents of a special education student who is the prevailing party.

(2) Funds under Part B of the Individuals with Disabilities Education Act may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of the IDEA and the procedural safeguards in this chapter. This does not preclude a public agency from using funds under Part B of the IDEA for conducting an action or proceeding under section 615 of the IDEA.

(3) A court awards reasonable attorneys' fees under section 615 (i)(3) of the IDEA consistent with the following:

(a) Fees awarded under section 615 (i)(3) of the IDEA must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this section.

(b) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the IDEA for services performed subsequent to the time of a written offer of settlement to a parent if:

(i) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

(ii) The offer is not accepted within ten days; and

(iii) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(c) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action.

(d) Notwithstanding (b) of this subsection, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(e) Except as provided in (f) of this subsection, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the IDEA, if the court finds that:

(i) The parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) The attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with WAC 392-172-351.

(f) The provisions of (e) of this subsection do not apply in any action or proceeding if the court finds that the state or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the IDEA.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-362, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-362, filed 10/11/95, effective 11/11/95.]

WAC 392-172-364 Student's status during hearing and judicial review processes. (1) Except as provided in WAC 392-172-370 through 392-172-385, during the pendency of any administrative or judicial proceeding regarding a hearing request initiated pursuant to WAC 392-172-350 unless the school district or other public agency and the parent(s) of the student or the adult student agree otherwise, the student involved in the hearing request shall remain in the educational program he or she was in at the time the hearing request was made.

(2) If the complaint involves an application for initial admission to public school, the student, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(3) If the decision of a hearing officer in a due process hearing agrees with student's parents that a change of placement is appropriate, that placement must be treated as an agreement between the state, school district or other public agency and the parents for purposes of this section.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-364, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-364, filed 10/11/95, effective 11/11/95.]

Disciplinary Exclusion

WAC 392-172-370 Disciplinary exclusion—Purpose. The purpose of WAC 392-172-370 through 392-172-385 is to ensure that special education students are not being improperly excluded from school for disciplinary reasons. Each school district or other public agency, educational service district and public agency serving special education students shall take steps to ensure that each employee, contractor, and other agent of the district or other public agency responsible for education or care of a special education student is knowledgeable of WAC 392-172-370 through 392-172-385. No school district or other public agency and no educational service district shall authorize, permit, or condone the use of disciplinary procedures which violate chapter 180-40 WAC and WAC 392-172-370 through 392-172-385 by any employee, contractor, or other agent of the district or other public agency responsible for the education or care of a special education student.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-370, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-370, filed 10/11/95, effective 11/11/95.]

WAC 392-172-371 Disciplinary exclusion—Definitions. The following definitions apply to this section only:

(1) "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) "Illegal drug" means a controlled substance, but does not include, a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of federal law.

(3) "Dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than two and one-half inches in length.

(4) "Substantial evidence" means beyond a preponderance of the evidence.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-371, filed 12/1/99, effective 1/1/00.]

WAC 392-172-373 Change of placement for disciplinary removals. For purposes of removals of a special education student from the student's current educational placement under WAC 392-172-370 through 392-172-38410, a change of placement occurs if:

(1) The removal is for more than ten consecutive school days; or

(2) The student is subjected to a series of removals that constitute a pattern because they cumulate to more than ten school days in a school year, and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-373, filed 12/1/99, effective 1/1/00.]

WAC 392-172-37500 Removals—Ten school days or less. To the extent removal would be applied to students without disabilities, school personnel may order the removal of a special education student from the student's current placement for not more than ten consecutive school days for any violation of school rules, and additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under WAC 392-172-373(2).

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-37500, filed 12/1/99, effective 1/1/00.]

WAC 392-172-37505 Required services. (1) A public agency need not provide services during periods of removal under WAC 392-172-37500 to a special education student who has been removed from his or her current placement for ten school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.

(2) In the case of a special education student who has been removed from his or her current placement for more than ten school days in that school year, the public agency, for the remainder of the removals, shall provide services to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

(3) When there is no change of placement, school personnel, in consultation with the student's special education teacher, determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-37505, filed 12/1/99, effective 1/1/00.]

WAC 392-172-37510 Change of placement—Removals for weapons or drugs. School personnel may order a change in placement of a special education student to an appropriate interim alternative educational setting for the same amount of time that a student without a disability would be subject to discipline, but for not more than forty-five days, if:

(1) The student possesses a weapon, or carries a weapon to school or to a school function under the jurisdiction of a state or local education agency; or

(2) The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a state or local educational agency.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-37510, filed 12/1/99, effective 1/1/00.]

WAC 392-172-377 Functional behavioral assessment and intervention plan. Within ten business days after first removing a student for more than ten school days in a school year, including weapons violations, drugs violations, or behavior that is substantially likely to result in injury to the student or to others, the following actions shall be taken by the school district or other public agency:

(1) If the district or other public agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the student before the behavior that resulted in the removal occurred, the district or other public agency shall convene an individualized education program meeting to develop an assessment plan.

(2) If the student already has a behavioral intervention plan, the individualized education program team shall meet to review the plan and its implementation and modify it, as necessary, to address the behavior.

(3) As soon as practicable after developing the plan described in subsection (1) of this section, and completing the assessments required by the plan, the district or other public agency shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

(4) If subsequently, a special education student who has a behavioral intervention plan and who has been removed from the student's current educational placement for more than ten school days in a school year is subjected to a removal that does not constitute a change of placement under WAC 392-172-373, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.

If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-377, filed 12/1/99, effective 1/1/00.]

WAC 392-172-379 Dangerous behavior—Authority of hearing officer. A hearing officer, described in WAC 392-172-352, may order a change in the placement of a special education student to an appropriate interim alternative educational setting for not more than forty-five days if the hearing officer, in an expedited due process hearing:

(1) Determines that the district or other public agency has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others;

(2) Considers the appropriateness of the student's current placement;

(3) Considers whether the district or other public agency has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and

(4) Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher meets the requirements of WAC 392-172-381 (1) and (2).

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-379, filed 12/1/99, effective 1/1/00.]

WAC 392-172-381 Determination of interim alternative educational setting. Any interim alternative educational setting in which a student is placed under WAC 392-172-37510 and 392-172-379 shall:

(1) Be selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current individualized education program, that will enable the student to meet the goals set out in that individualized education program; and

(2) Include services and modifications designed to address the behavior described in WAC 392-172-37510 or 392-172-379, that are designed to prevent the behavior from recurring.

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The individualized education program team shall determine an interim alternative educational setting under WAC 392-172-37510.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-381, filed 12/1/99, effective 1/1/00.]

WAC 392-172-38300 Manifestation determination review requirements. If an action is contemplated by a school district, other public agency personnel, or a hearing officer that involves removing a student for weapons violations, drugs violations, behavior that is substantially likely to result in injury to the student or to others, or other behavior that violates any rule or code of conduct that applies to all students which results in a change of placement under WAC 392-172-373, the following actions shall be taken by the school district or other public agency:

(1) Not later than the date on which the decision to remove the student is made, the parents must be notified of that decision and provided the procedural safeguards notice described under this chapter; and

(2) Immediately, if possible, but in no case later than ten school days after the date on which the decision to remove the student is made, a review must be conducted of the relationship between the student's disability and the behavior subject to the disciplinary action.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-38300, filed 12/1/99, effective 1/1/00.]

WAC 392-172-38305 Procedures for conducting a manifestation determination. The individualized education program team and other qualified personnel in a meeting shall conduct a manifestation determination review. In carrying out the review, the team may determine that the behavior of the student was not a manifestation of the student's disability only if the team:

(1) First considers, in terms of the behavior subject to disciplinary action, all relevant information including:

(a) Evaluation and diagnostic results, including the results of other relevant information supplied by the parents of the student;

(b) Observations of the student; and

(c) The student's individualized education program and placement.

(2) Then determines that:

(a) In relationship to the behavior subject to disciplinary action, the student's individualized education program and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's individualized education program and placement;

(b) The student's disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action; and

(c) The student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.

(3) If the team determines that any of the above standards in this section were not met, the behavior must be considered a manifestation of the student's disability.

(4) The manifestation determination review described in this section may be conducted at the same individualized education program meeting that is convened to address a functional behavioral assessment and behavioral intervention plan.

(5) If the review identifies deficiencies in the student's IEP or placement or in their implementation, the district or other public agency must take immediate steps to remedy those deficiencies.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-38305, filed 12/1/99, effective 1/1/00.]

WAC 392-172-38310 Determination that behavior was not manifestation of disability. (1) If the results of the manifestation determination review indicate that the behavior of the special education student was not a manifestation of the student's disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which they would be applied to students without disabilities, except that a free appropriate public education shall continue to be made available to those students consistent with this chapter.

(2) The student's IEP team determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP if the student is removed because of behavior that has been determined not to be a manifestation of the student's disability.

(3) If the school district or other public agency initiates disciplinary procedures applicable to all students, the district or other public agency shall ensure that the special education and disciplinary records of the special education student are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(4) If a parent requests a hearing to challenge the determination that the behavior of the student was not a manifestation of the student's disability, then the student shall remain in the student's current educational placement as described in WAC 392-172-364 or interim alternative educational setting consistent with WAC 392-172-38405, whichever applies.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-38310, filed 12/1/99, effective 1/1/00.]

WAC 392-172-38400 Parent appeal. (1) If the student's parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement for disciplinary purposes, the parent may request a hearing.

(2) Pursuant to WAC 392-172-350 the office of superintendent of public instruction shall arrange for an expedited hearing in any case described in WAC 392-172-38415 if requested by the parent.

(3) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the district or other public agency has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with the requirements of WAC 392-172-38305.

(4) In reviewing a decision to place the student in an interim alternative educational setting, the hearing officer shall apply the standards, under WAC 392-172-379.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-38400, filed 12/1/99, effective 1/1/00.]

WAC 392-172-38405 Placement during appeals. (1) If a parent requests a hearing regarding a disciplinary action related to removals for weapons or drugs or dangerous behavior to challenge the interim alternative educational setting or the manifestation determination, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the forty-five day time period provided for, whichever occurs first, unless the parent and the school district or other public agency agree otherwise.

(2) If a student is placed in an interim alternative educational setting pursuant to this section and school personnel propose to change the student's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the student must remain in the current placement (the student's placement prior to the interim alternative educational setting), except as provided for below.

(3) If school or other agency personnel maintain that it is dangerous for the student to be in the current placement (placement prior to removal to the interim alternative educational setting) during the pendency of the due process proceedings, the district or other public agency may request an expedited due process hearing.

(4) In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards under WAC 392-172-379.

(5) A placement ordered pursuant to this section may not be longer than forty-five days.

(6) The procedure in this section may be repeated as necessary.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-38405, filed 12/1/99, effective 1/1/00.]

WAC 392-172-38410 Protections for students not yet eligible for special education and related services. (1) A student who has not been determined to be eligible for special education and any necessary related services under this chapter and who has engaged in behavior that violated any rule or code of conduct of the school district or other public agency, including any behavior described in this section, may assert any of the protections provided for in this section if the school district or other public agency had knowledge that the student was a special education student before the behavior that precipitated the disciplinary action occurred. A school district or other public agency must be deemed to have knowledge that a student is a special education student if:

(a) The parent of the student has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational or other public agency that the student is in need of special education and related services;

(b) The behavior or performance of the student demonstrates the need for these services in accordance with this chapter;

(c) The parent of the student has requested an evaluation of the student pursuant to this chapter; or

(d) The teacher of the student, or other personnel of the district or other public agency, has expressed concern about the behavior or performance of the student to the director of special education of the district or other public agency or to other personnel of the district or other public agency in accordance with their established child find or special education referral system.

(2) A district or other public agency would not be deemed to have knowledge under subsection (1) of this section, if as a result of receiving the information, the district or other public agency:

(a) Either:

(i) Conducted an evaluation consistent with this chapter and determined that the student was not a special education student; or

(ii) Determined that an evaluation was not necessary; and

(b) Provided notice to the student's parents of its determination consistent with this chapter.

(3) If the district or other public agency does not have knowledge that a student is a special education student prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as measures applied to students without disabilities who engaged in comparable behaviors consistent with this section.

(4) If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under this section, the evaluation must be conducted in an expedited manner.

(5) Until the evaluation is completed, the student remains in the educational placement determined by school or other public agency which can include suspension or expulsion without educational services.

(6) If the student is determined to be a special education student taking into consideration information from the evaluation conducted by the district or other public agency and information provided by the parents, the district or other public agency shall provide special education and any necessary related services in accordance with the provisions of this chapter, including the discipline procedures and free appropriate public education requirements.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-38410, filed 12/1/99, effective 1/1/00.]

WAC 392-172-38415 Expedited due process hearings. (1) Expedited due process hearings under this section shall:

(a) Result in a written decision being mailed to the parties within forty-five days of the office of superintendent of public instruction's receipt of the request for the hearing without exceptions or extensions. The timeline established in this subsection shall be the same for hearings requested by parents, school districts or other public agencies;

(b) Meet the requirements of WAC 392-172-354 except that the time periods identified for the disclosure of records and evaluations for purposes of expedited due process hearings are not less than two business days; and

(c) Be conducted by a due process hearing officer who satisfies the impartiality requirements of WAC 392-172-352.

(2) The decisions on expedited due process hearings are appealable under the state's normal due process appeal procedures.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-38415, filed 12/1/99, effective 1/1/00.]

WAC 392-172-385 Referral to and action by law enforcement and judicial authorities. (1) Nothing in Part B of the Individuals with Disabilities Education Act, or this chapter prohibits a school district or other public agency from reporting a crime committed by a special education student to appropriate authorities, or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a special education student.

(2) A school district or other public agency reporting a crime committed by a special education student shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(3) A school district or other public agency reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-385, filed 12/1/99, effective 1/1/00.]

AVERSIVE INTERVENTIONS—SAFEGUARDS

WAC 392-172-388 Aversive interventions. The purpose of WAC 392-172-388 through 392-172-398 is to assure that special education students are safeguarded against the use and misuse of various forms of aversive interventions. Each school district or other public agency and educational service district shall take steps to assure that each employee, volunteer, contractor, and other agent of the district or other public agency responsible for the education, care, or custody of a special education student is aware of WAC 392-172-388 through 392-172-398. No school district or other public agency and no educational service district shall authorize, permit, or condone the use of aversive interventions which violates WAC 392-172-390 through 392-172-396 by any employee, volunteer, contractor or other agent of the district or other public agency responsible for the education, care, or custody of a special education student. Aversive interventions, to the extent permitted, shall only be used as a last resort. Positive interventions shall be attempted by the district or other public agency and educational service district and described in the individualized education program consistent with WAC 392-172-161 prior to the use of aversive interventions.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-388, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-388, filed 10/11/95, effective 11/11/95.]

WAC 392-172-390 Aversive interventions—Definition. For the purpose of WAC 392-172-388 through 392-172-398, the term "aversive interventions" means the systematic use of stimuli or other treatment which a student is known to find painful or unpleasant for the purpose of discouraging undesirable behavior on the part of the student. The term does not include the use of reasonable force, restraint, or other treatment to control unpredicted spontaneous behavior which poses one of the following dangers:

(1) A clear and present danger of serious harm to the student or another person.

(2) A clear and present danger of serious harm to property.

(3) A clear and present danger of seriously disrupting the educational process.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-390, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-390, filed 10/11/95, effective 11/11/95.]

WAC 392-172-392 Aversive interventions—Prohibited forms. There are certain forms of aversive interventions that are manifestly inappropriate by reason of their offensive nature or their potential negative physical consequences, or both. The purpose of this section is to uniformly prohibit their use respecting special education students as follows:

(1) Electric current. No student may be stimulated by contact with electric current.

(2) Food services. No student who is willing to consume subsistence food or liquid when the food or liquid is customarily served may be denied or subjected to an unreasonable delay in the provision of the food or liquid.

(3) Force and restraint in general. No force or restraint which is either unreasonable under the circumstances or deemed to be an unreasonable form of corporal punishment as a matter of state law may be used. See RCW 9A.16.100 which cites the following uses of force or restraint as uses which are presumed to be unreasonable and therefore unlawful:

(a) Throwing, kicking, burning, or cutting a student.

(b) Striking a student with a closed fist.

(c) Shaking a student under age three.

(d) Interfering with a student's breathing.

(e) Threatening a student with a deadly weapon.

(f) Doing any other act that is likely to cause bodily harm to a student greater than transient pain or minor temporary marks.

(4) The statutory listing of worst case uses of force or restraint described in subsection (3) of this section may not be read as implying that all unlisted uses (e.g., shaking a four year old) are permissible. Whether or not an unlisted use of force or restraint is permissible depends upon such considerations as the balance of these rules, and whether the use is reasonable under the circumstances.

(5) Hygiene care. No student may be denied or subjected to an unreasonable delay in the provision of common hygiene care.

(6) Isolation. No student may be excluded from his or her general instructional or service area and isolated within a room or any other form of enclosure, except under the conditions set forth in WAC 392-172-394.

(7) Medication. No student may be denied or subjected to an unreasonable delay in the provision of medication.

(8) Noise. No student may be forced to listen to noise or sound that the student finds painful.

(9) Noxious sprays. No student may be forced to smell or be sprayed in the face with a noxious or potentially harmful substance.

(10) Physical restraints. No student may be physically restrained or immobilized by binding or otherwise attaching the student's limbs together or by binding or otherwise attaching any part of the student's body to an object, except under the conditions set forth in WAC 392-172-394.

(11) Taste treatment. No student may be forced to taste or ingest a substance which is not commonly consumed or which is not commonly consumed in its existing form or concentration.

(12) Water treatment. No student's head may be partially or wholly submerged in water or any other liquid.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-392, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-392, filed 10/11/95, effective 11/11/95.]

WAC 392-172-394 Aversive interventions—Other forms—Conditions. Use of various forms of aversive interventions which are not prohibited by WAC 392-172-392 warrant close scrutiny. Accordingly, the use of aversive interventions involving bodily contact, isolation, or physical restraint not prohibited by WAC 392-172-392 is conditioned upon compliance with certain procedural and substantive safeguards, as follows:

(1) Bodily contact. The use of any form of aversive interventions not prohibited by WAC 392-172-392 which involves contacting the body of a special education student shall be provided for by the terms of the student's individualized education program established in accordance with the requirements of WAC 392-172-396.

(2) Isolation. The use of aversive interventions which involves excluding a special education student from his or her general instructional area and isolation of the student within a room or any other form of enclosure is subject to each of the following conditions:

(a) The isolation, including the duration of its use, shall be provided for by the terms of the student's individualized education program established in accordance with the requirements of WAC 392-172-396.

(b) The enclosure shall be ventilated, lighted, and temperature controlled from inside or outside for purposes of human occupancy.

(c) The enclosure shall permit continuous visual monitoring of the student from outside the enclosure.

(d) An adult responsible for supervising the student shall remain in visual or auditory range of the student.

(e) Either the student shall be capable of releasing himself or herself from the enclosure or the student shall continuously remain within view of an adult responsible for supervising the student.

(3) Physical restraint. The use of aversive interventions which involves physically restraining or immobilizing a special education student by binding or otherwise attaching the student's limbs together or by binding or otherwise attaching any part of the student's body to an object is subject to each of the following conditions:

(a) The restraint shall only be used when and to the extent it is reasonably necessary to protect the student, other persons, or property from serious harm.

(b) The restraint, including the duration of its use, shall be provided for by the terms of the student's individualized education program established in accordance with the requirements of WAC 392-172-396.

(c) The restraint shall not interfere with the student's breathing.

(d) An adult responsible for supervising the student shall remain in visual or auditory range of the student.

(e) Either the student shall be capable of releasing himself or herself from the restraint or the student shall continuously remain within view of an adult responsible for supervising the student.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-394, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-394, filed 10/11/95, effective 11/11/95.]

WAC 392-172-396 Aversive interventions—Individualized education program requirements. If the need for use of aversive interventions are determined appropriate by the IEP team, the individualized education program shall:

(1) Be consistent with the recommendations of the IEP team which includes a school psychologist and/or other certificated employee who understands the appropriate use of the aversive interventions and who concurs with the recommended use of the aversive interventions, and a person who works directly with the student.

(2) Specify the aversive interventions that may be used.

(3) State the reason the aversive interventions is judged to be appropriate and the behavioral objective sought to be achieved by its use, and shall describe the positive interventions attempted and the reasons they failed, if known.

(4) Describe the circumstances under which the aversive interventions may be used.

(5) Describe or specify the maximum duration of any isolation or restraint.

(6) Specify any special precautions that must be taken in connection with the use of the aversive interventions technique.

(7) Specify the person or persons permitted to use the aversive interventions and the current qualifications and required training of the personnel permitted to use the aversive interventions.

(8) Establish a means of evaluating the effects of the use of the aversive interventions and a schedule for periodically conducting the evaluation.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-396, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-396, filed 10/11/95, effective 11/11/95.]

Student Records

WAC 392-172-400 Definition of "educational records" as used in records rules. (1) For the purpose of WAC 392-172-400 through 392-172-426 and consistent with the Family Educational Rights and Privacy Act, the term "educational records" shall mean those records that:

(a) Are directly related to a student; and

(b) Are maintained by a school district or other public agency or by a party acting for the school district or other public agency.

(2) The term "educational records" does not include:

(a) Records of instructional, supervisory, administrative personnel, and educational personnel ancillary to those persons if those records:

(i) Are in the sole possession of the maker of the record; and

(ii) Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record and does not refer to an individual who permanently succeeds the maker of the record in his or her position;

(b) Records of a law enforcement unit of a school district or other public agency which are:

(i) Maintained separately from the educational records described in subsection (1) of this section;

(ii) Maintained solely for law enforcement purposes; and

(iii) Not disclosed to individuals other than law enforcement officials of the same district or other public agency. This exception from the definition of educational records does not apply if educational records are disclosed to personnel of the school district and other public agency's law enforcement unit;

(c) Records relating to an individual who is employed by a school district or other public agency, that:

(i) Are made and maintained in the normal course of business;

(ii) Relate exclusively to the individual in that individual's capacity as an employee; and

(iii) Are not available for use for any other purpose. This exception from the definition of "educational records" does not apply to records relating to an individual in attendance at the school district or other public agency who is employed as a result of his or her status as a student;

(d) Records relating to an adult student which are:

(i) Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional acting in their professional or paraprofessional capacity;

(ii) Created, maintained, or used only in connection with the treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. However, the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the school district or other public agency;

(e) Records that only contain information about a student after he or she is no longer a student at that school district or other public agency.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-400, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-400, filed 10/11/95, effective 11/11/95.]

WAC 392-172-402 Definitions—"Destruction," "participating agency" and "personally identifiable." For the purpose of WAC 392-172-400 through 392-172-426 governing records of special education students:

(1) "Destruction" shall mean physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(2) "Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information or from which information is obtained in implementing this chapter, and includes school districts and other public agencies.

(3) "Personally identifiable" means information that includes:

(a) The name of the student, the student's parent, or other family member;

(b) The address of the student;

(c) A personal identifier, such as the student's social security number or student number;

or

(d) A list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

(4) "Consent" and "Native language" are defined at WAC 392-172-040.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-402, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-402, filed 10/11/95, effective 11/11/95.]

WAC 392-172-404 Notice to parents. (1) Parents of special education students and adult students have rights regarding the protection of the confidentiality of any personally identifiable information collected, used, or maintained under WAC 392-172-400 through 392-172-426, the Family Educational Rights and Privacy Act of 1974, as amended, chapter 28A.155 RCW, and other Washington state law.

(2) State publications regarding special education are available in alternative languages and formats on request.

(3) Personally identifiable information about students for use by the state may be contained in citizen's complaints, safety net applications, due process hearings and mediation agreements. The state may also receive personally identifiable information as a result of grant evaluation performance. This information is removed before forwarding information to other agencies or individuals requesting the information, unless the parent or adult student consents to release the information or the information is allowed to be released without parent consent under the regulations implementing the Family Educational Rights and Privacy Act, 34 CFR Part 99.

(4) Before undertaking any major identification, location, or evaluation activity, the state, at a minimum, publishes notice in newspapers with circulation adequate to notify parents throughout the state of the activity and posts information on its web site.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-404, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-404, filed 10/11/95, effective 11/11/95.]

WAC 392-172-406 Opportunity to examine records. The parents of a special education student, in accordance with the confidentiality procedures in this chapter, shall be afforded an opportunity to inspect and review all educational records which shall include, but not be limited to:

(1) The identification, evaluation, and the delivery of educational services to the student; and

(2) The provision of free, appropriate public education to the student.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-406, filed 10/11/95, effective 11/11/95.]

WAC 392-172-408 Access rights. (1) Each school district or other public agency shall permit parents of special education students (or adult students) to inspect and review, during school business hours, any educational records relating to their student or the adult student which are collected, maintained, or used by the district or other public agency under this chapter. The district or other public agency shall comply with a request promptly and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student, including disciplinary proceedings. The school district or other public agency shall respond, in no case, more than forty-five calendar days after the request has been made.

(2) The right to inspect and review educational records under this section includes:

(a) The right to a response from the educational agency to reasonable requests for explanations and interpretations of the records;

(b) The right to request that the school district or other public agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(c) The right to have a representative of the parent or adult student inspect and review records.

(3) A school district or other public agency may presume that a parent has authority to inspect and review records relating to his or her student unless the district or other public agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-408, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-408, filed 10/11/95, effective 11/11/95.]

WAC 392-172-410 Record of access. Each school district or other public agency shall keep a record of parties obtaining access to educational records collected, maintained, or used under this chapter including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. The agency is not required to keep a record of access by parents, adult students, and authorized employees of the school district or other public agency with a legitimate educational interest in the records.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-410, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-410, filed 10/11/95, effective 11/11/95.]

WAC 392-172-412 Records on more than one student. If any educational record includes information on more than one student, the parent(s) of those students (and/or adult students) shall have the right to inspect and review only the information relating to their student (or themselves) or to be informed of that specific information.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-412, filed 10/11/95, effective 11/11/95.]

WAC 392-172-414 List of types and locations of information. Each school district or other public agency shall provide parents (and adult students) on request a list of the types and locations of educational records collected, maintained, or used by the agency.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-414, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-414, filed 10/11/95, effective 11/11/95.]

WAC 392-172-416 Fees. (1) A participating educational agency may charge a fee for copies of records which are made for parents (or adult students) under this chapter if the fee does not effectively prevent the parents (or adult students) from exercising their right to inspect and review those records.

(2) A participating educational agency may not charge a fee to search for or to retrieve information under this chapter.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-416, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-416, filed 10/11/95, effective 11/11/95.]

WAC 392-172-418 Amendment of records at the request of a parent or adult student. (1) A parent of a special education student (or an adult student) who believes that information in educational records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the student may request that the school district or other public agency which maintains the information amend the information.

(2) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time after receipt of the request.

(3) If the agency refuses to amend the information in accordance with the request, the agency shall inform the parent or adult student of the refusal and advise the parent or adult student of the right to a hearing provided for in WAC 392-172-420.

(4) The school district or other public agency, on request, shall provide the parent or adult student an opportunity for a hearing to challenge information, in the educational records, to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

(5) If, as a result of the hearing, the school district or other public agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the agency shall amend the information accordingly and so inform the parent or adult student in writing.

(6) If, as a result of the hearing, the school district or other public agency decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the agency shall inform the parent(s) or adult student of the right to place in the records it maintains on the student a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(7) Any explanation placed in the records of the student in compliance with this section shall:

(a) Be maintained by the participating agency as part of the records of the student as long as the records or the contested portion is maintained by the educational agency; and

(b) Also be disclosed to any party to whom the records of the student (or the contested portion thereof) are disclosed.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-418, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-418, filed 10/11/95, effective 11/11/95.]

WAC 392-172-420 Hearing procedures regarding records. A hearing initiated pursuant to WAC 392-172-418 to challenge information in educational records shall be conducted according to procedures developed by the school district or other public agency, that include at least the following elements:

(1) The hearing shall be held within a reasonable period of time after the agency has received the request;

(2) The parent or adult student shall be given notice of the date, place, and time reasonably in advance of the hearing;

(3) The hearing may be conducted by any party, including an official of the agency, who does not have a direct interest in the outcome of the hearing;

(4) The parent or adult student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised pursuant to WAC 392-172-418 and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(5) The agency shall provide a written decision to the parent or adult student within a reasonable period of time after the conclusion of the hearing; and

(6) The decision of the agency shall:

(a) Be based solely upon the evidence presented at the hearing; and

(b) Include a summary of the evidence and the reasons for the decision.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-420, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-420, filed 10/11/95, effective 11/11/95.]

WAC 392-172-422 Consent. (1) Subject to subsection (3) of this section, written consent of a parent or adult student shall be obtained before personally identifiable information is:

(a) Disclosed to anyone other than officials of participating agencies collecting or using the information obtained under this chapter; or

(b) Used for any purpose other than meeting a requirement imposed by this chapter.

(2) The written parental consent must be signed, dated and:

(a) Specify the records that may be disclosed;

(b) State the purpose of the disclosure; and

(c) Identify the party or class of parties to whom the disclosure may be made.

(3) No school district or other public agency shall release information from educational records to participating agencies or other agencies or institutions without the written consent of a parent or adult student, unless release of the educational records is allowed under one of the exceptions under the rules implementing the federal Educational Rights and Privacy Act, 34 Code of Federal Regulations (CFR) 34 Part 99, sections 99.1 et seq.

(4) If a parent refuses to provide consent under this section, the school district or other public agency may offer mediation to the parent or use the due process hearing procedures in this chapter to override parental refusal.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-422, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-422, filed 10/11/95, effective 11/11/95.]

WAC 392-172-424 Safeguards. (1) Each participating agency shall protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages. The same privacy provisions provided to parents are extended to special education students with consideration given to the type and severity of the student's disability.

(2) One official at each participating agency shall be designated as the individual responsible for assuring the confidentiality of any personally identifiable information.

(3) All persons collecting or using personally identifiable information shall receive training or instruction regarding:

(a) The procedures on protection of the confidentiality of personally identifiable information, contained in this chapter, state law, the regulations implementing the Family Educational Rights and Privacy Act (34 CFR Part 99), and the school district's or other public agency's procedures.

(4) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-424, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-424, filed 10/11/95, effective 11/11/95.]

WAC 392-172-426 Destruction of information. (1) Each school district or other public agency shall inform parent(s) (and adult students) when personally identifiable information collected, maintained, or used in compliance with this chapter is no longer needed to provide educational services to the student. State law regarding records retention is contained in chapter 40.24 RCW. State procedures for school district records retention is published by the secretary of state, division of archives and records management.

(2) The information shall thereafter be destroyed at the request of the parent(s) or adult student. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-426, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-426, filed 10/11/95, effective 11/11/95.]

STATE PROCEDURES—REQUIREMENTS—STANDARDS

State Advisory Council

WAC 392-172-500 Advisory council. (1) The special education state advisory council is established in order to help facilitate the provision of special education and related services to meet the unique needs of special education students.

(2) The membership of the council shall include at least one representative of each of the following groups or entities:

(a) Individuals with disabilities;
(b) Teachers;
(c) Parents of special education students;
(d) Local administrators of special education programs;
(e) Support services personnel;
(f) Superintendents;
(g) Principals;

(h) Nonpublic schools serving special education students;

(i) School directors;

(j) Institutions of higher education that prepare special education and related services personnel;

(k) State agencies involved in the financing or delivery of related services to special education students;

(l) Vocational, community, or business organization concerned with the provision of transition services to special education students;

(m) State juvenile and adult corrections agencies;

(n) Other individuals or groups as may hereafter be designated and approved by the superintendent of public instruction.

A majority of the members of the advisory council shall be individuals with disabilities or parents of special education students.

(3) The council's purposes are to:

(a) Advise the superintendent of public instruction and make recommendations on all matters related to special education and specifically advise the superintendent of unmet needs within the state in the education of special education students including personnel needs as addressed in the state's comprehensive system of personnel development, WAC 392-172-550 et seq.;

(b) Comment publicly on any rules or regulations proposed by the state regarding the education of special education students;

(c) Assist the state in developing and reporting such information and evaluations as may assist the federal government;

(d) Advise the state in developing corrective action plans to address findings identified in federal monitoring reports under Part B of the Individuals with Disabilities Education Act;

(e) Advise the state in developing and implementing policies relating to the coordination of services for special education students; and

(f) Advise the state on the education of eligible special education students who have been convicted as adults and incarcerated in adult prisons.

(4) The council shall follow the procedures in this subsection.

(a) The advisory council shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory council shall submit an annual report of council activities and suggestions to the superintendent of public instruction. This report must be made available to the public in a manner consistent with other public reporting requirements of this chapter.

(c) Official minutes must be kept on all council meetings and shall be made available to the public on request to the office of superintendent of public instruction.

(d) All advisory council meetings and agenda items must be publicly announced enough in advance of the meeting to afford interested parties a reasonable opportunity to attend, and meetings must be open to the public.

(e) Interpreters and other necessary services must be provided at council meetings for council members or participants.

(f) The advisory council shall serve without compensation but the superintendent of public instruction must reimburse the council for reasonable and necessary expenses for attending meetings and performing duties.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-500, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-500, filed 10/11/95, effective 11/11/95.]

Methods of Ensuring Services

WAC 392-172-502 Interagency agreements. (1) The superintendent of public instruction shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in this section and the superintendent of public instruction, in order to ensure that all services described in this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute. Consideration shall be given to preserving existing arrangements between school districts and other noneducational public agencies which are consistent with this chapter. These agreements or mechanisms shall:

(a) Describe the role that each agency plays in providing or paying for required services;

(b) Define the financial responsibility of each agency for providing special education students with a free appropriate public education. The financial responsibility of each noneducational public agency including the state Medicaid agency and other public insurers of special education students, shall precede the financial responsibility of the school district (or the state agency responsible for development of the student's individualized education program);

(c) Establish procedures for resolving interagency disputes among agencies that are parties to the agreements;

(d) Establish procedures under which school districts and other public agencies may initiate proceedings in order to secure reimbursement from agencies that are parties to the agreements or otherwise implement the provisions of the agreements; and

(e) Establish procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services.

(2) If any public agency other than a school district is otherwise obligated under federal or state law, or assigned responsibility under state policy to provide or pay for any services that are also considered special education or related services as defined in this chapter, such as, but not limited to, assistive technology devices and services, supplementary aids and services and transition services that are necessary for ensuring a free appropriate public education to special education students within the state, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

(3) A noneducational public agency may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

(4) If a public agency other than an educational agency fails to provide or pay for the special education and related services described in this section, the school district (or state agency responsible for developing the student's IEP) shall provide or pay for these services to the student in a timely manner. The school district or state agency may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency shall reimburse the school district or state agency in accordance with the terms of the interagency agreement or other mechanism described in this section, and the agreement described in subsection (1)(d) of this section.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-502, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-502, filed 10/11/95, effective 11/11/95.]

WAC 392-172-50300 Special education students covered by public insurance. (1) A public agency may use the Medicaid or other public insurance benefits programs in which a student participates to provide or pay for services required under this chapter, as permitted under the public insurance program, except as provided in subsection (2) of this section.

(2) With regard to services required to provide FAPE to an eligible student under this chapter, the public agency:

(a) May not require parents to sign up for or enroll in public insurance programs in order for their student to receive FAPE under Part B of the IDEA;

(b) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this chapter, but pursuant to WAC 392-172-50305, may pay the cost that the parent otherwise would be required to pay; and

(c) May not use a student's benefits under a public insurance program if that use would:

(i) Decrease available lifetime coverage or any other insured benefit;

(ii) Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the student outside of the time the student is in school;

(iii) Increase premiums or lead to the discontinuation of insurance; or

(iv) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-50300, filed 12/1/99, effective 1/1/00.]

WAC 392-172-50305 Special education students covered by private insurance. (1) With regard to services required to provide FAPE to an eligible student under this chapter, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent consistent with this chapter.

(2) Each time the public agency proposes to access the parent's private insurance proceeds, it must:

(a) Obtain parent consent in accordance with this chapter; and

(b) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(3) If a public agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this chapter, to ensure FAPE the public agency may use its Part B funds to pay for the service.

(4) To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

(5) Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25.

(6) If a public agency spends reimbursements from federal funds (e.g., Medicaid) for services under this chapter those funds will not be considered "state or local" funds for purposes of the maintenance of effort provisions in this chapter.

(7) Nothing in this section should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public insurance program by federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, or any other public insurance program.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-50305, filed 12/1/99, effective 1/1/00.]

Program Monitoring—Funding—Fiscal Auditing

WAC 392-172-504 Monitoring. (1) The superintendent of public instruction or designee shall annually monitor selected local school districts or other public agency special education programs, so that all districts or other public agencies are monitored at least once every four years. The purpose of monitoring is to determine the school district and other public agency's compliance with this chapter, chapter 28A.155 RCW, federal regulations implementing 20 USC Section 1400, et seq. (Part B of the Individuals with Disabilities Education Act) and other federal and state education laws necessary to validate compliance with this chapter, including validation of information included in school district or other public agency requests for federal funds.

(2) Procedures for monitoring school districts and other public agencies include:

(a) Collection of data;

(b) Conduct of on-site visits; and

(c) Comparison of a sampling of evaluation reports and individualized education programs with the services actually provided.

(3) Following a monitoring visit, an interim monitoring report, including a proposed corrective action plan, shall be submitted to the school district or other public agency. The monitoring report shall include, but not be limited to:

(a) Findings of noncompliance, if any; and

(b) Required corrective actions for remediation of any such instance(s) of noncompliance.

(4) The school district or other public agency shall have thirty calendar days after the date of its receipt of the interim monitoring report to provide the office of superintendent of public instruction with:

(a) Acceptance of the report; or

(b) Supplemental arguments and/or facts which may serve as a basis for alteration of the monitoring report; and

(c) Any revisions to the proposed action plan which sets forth the measures the district or other public agency shall take and time period(s) within which the district or other public agency shall act in order to remediate the instance(s) of noncompliance.

(5) In the event that the district or other public agency submits supplemental arguments and/or facts which may serve as a basis for alteration of the monitoring report, the office of superintendent of public instruction shall provide the district or other public agency with a final monitoring report within thirty calendar days after receipt of the supplemental arguments and/or facts.

(6) If the school district or other public agency fails to comply with a corrective action plan approved pursuant to subsection (5) of this section, the superintendent of public instruction

or designee shall institute procedures to ensure corrective action. Such procedures may include one or more of the following:

(a) Verification visits by office of superintendent of public instruction staff, or its designee, to:

(i) Determine whether the school district or other public agency is taking the required corrective action;

(ii) Expedite the school district and other public agency's response to the final monitoring report; and

(iii) Provide any necessary technical assistance to the school district or other public agency in its efforts to comply.

(b) Withholding, in whole or part, a specified amount of state and/or federal special education funds, in compliance with the provisions of WAC 392-172-590 and 392-172-514.

(c) Initiating an audit of the school district or other public agency consistent with WAC 392-172-512.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-504, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-504, filed 10/11/95, effective 11/11/95.]

WAC 392-172-506 State use and allocation of Part B funds. (1) The superintendent of public instruction may not use more than fifteen percent of the total state allocation under Part B of the Individuals with Disabilities Education Act and section 619 (including the coordination of activities under Part B of the IDEA with, and providing technical assistance to, other programs that provide services to special education students) in any preceding fiscal year, cumulatively adjusted by the secretary of the department of education for each succeeding fiscal year by the lesser of:

(a) The percentage increase, if any from the preceding fiscal year in the state's allocation under section 611 of the act; or

(b) The rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the consumer price index for all urban consumers, published by the bureau of labor statistics of the department of labor.

(2) Allowable costs for use of the administrative funds under Part B and section 619 of the Individuals with Disabilities Education Act include:

(a) Administration of state activities and for planning at the state level, including planning, or assisting in the planning, of programs or projects for the education of special education students;

(b) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of special education students;

(c) Technical assistance to districts with respect to the requirements of this chapter;

(d) Leadership services for the program supervision and management of special education activities for special education students; and

(e) Other state leadership activities and consultative services.

(3) The office of the superintendent of public instruction based on input from school districts may use the portion of its allocation it does not use for administration:

(a) For support services and direct services; and

(b) For the administrative costs of the state's monitoring activities and complaint investigations, to the extent that these costs exceed the administrative costs for monitoring and complaint investigations incurred during fiscal year 1985;

(c) The establishment and implementation of the mediation process required by this chapter, including providing for the costs of mediators and support personnel;

(d) To assist school districts in meeting personnel shortages;

(e) Activities at the state and local levels to meet the performance goals established by the state and to support the development and implementation of the state improvement plan under subpart 1 of Part D of the IDEA if the state receives funds under that subpart;

(f) To supplement other amounts used to develop and implement a state-wide coordinated services system designed to improve results for students and families, including special education students and their families, but not to exceed one percent of the amount received by the state under section 611 of the IDEA. This system must be coordinated with and, to the extent appropriate, build on the system of coordinated services developed by the state under Part C of the IDEA; and

(g) For subgrants to school districts for capacity-building and improvement.

(4) Based upon the availability of federal funds for any given fiscal year, the office of superintendent of public instruction may establish priorities in awarding subgrants to school districts for capacity-building and improvement on a competitive or targeted basis.

These federal funds are to be used by school districts to assist them in providing direct services and in making systemic change to improve results for special education students through one or more of the following:

(a) Direct services, including alternative programming for students who have been expelled from school, and services for students in correctional facilities, and students enrolled in state-operated or state-supported schools;

(b) Addressing needs or carrying out improvement strategies identified in the state's improvement plan under subpart 1 of Part D of the IDEA;

(c) Adopting promising practices, materials, and technology, based on knowledge derived from education research and other sources;

(d) Establishing, expanding, or implementing interagency agreements and arrangements between school districts and other agencies or organizations concerning the provision of services to special education students and their families; and

(e) Increasing cooperative problem-solving between parents and school personnel and promoting the use of alternative dispute resolution.

(5) For the purposes of this section:

(a) "Direct services" means services provided to a special education student by the state directly, by contract, or through other arrangements; and

(b) "Support services" includes implementing the comprehensive system of personnel development, recruitment and training of hearing officers, mediators, and surrogate parents, and public information and parent training activities relating to free, appropriate public education for special education students.

(6) Of the funds the office of the superintendent of public instruction retains under this section, the office may use the funds directly, or distribute them to school districts, educational service districts, and other public agencies on a competitive, targeted, or formula basis.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-506, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-506, filed 10/11/95, effective 11/11/95.]

WAC 392-172-507 State level nonsupplanting and maintenance of effort. (1) Except as provided under WAC 392-172-606, federal funds available for special education students under Part B of the Individuals with Disabilities Education Act, shall be used to supplement, and in no case supplant, federal, state and local funds (including funds that are not under the direct control of the state or local education agencies) expended for special education and related services provided to special education students.

(2) On either a total or per-capita basis, the state will not reduce the amount of state financial support for special education and related services for special education students, or otherwise made available because of the excess costs of educating those students, below the amount of that support for the preceding fiscal year.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-507, filed 12/1/99, effective 1/1/00.]

WAC 392-172-508 Definition of "unlawfully received or expended funds." For the purpose of WAC 392-172-512 through 392-172-518, "unlawfully received or expended funds" shall mean any state or federal special education funds received and held or expended by a school district or other public agency in a manner or for a purpose that is in violation of any provision of:

(1) State statute or rule, including this chapter; or

(2) Any federal rule or condition to funding that may now or hereafter supplement this chapter including:

The recovery of funds based on inaccurate child count information under the Individuals with Disabilities Education Act.

(3) In addition to meeting the other requirements of this chapter, the superintendent of public instruction shall:

(a) Establish procedures to be used by school districts and other public agencies in counting the number of special education students receiving special education and related services;

(b) Set dates by which those agencies and institutions must report to the superintendent of public instruction to ensure that the state complies with federal requirements;

(c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required by the United States Department of Education; and

(e) Ensure that documentation is maintained that enables the state and the United States Secretary of Education to audit the accuracy of the count.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-508, filed 10/11/95, effective 11/11/95.]

WAC 392-172-510 Child count procedures. The superintendent of public instruction shall report to the United States Secretary of Education no later than February 1 of each year the number of special education students aged three through twenty-one residing in the state who are receiving special education and related services. The superintendent shall submit the report on forms provided by the United States Secretary of Education.

(1) Information required in the report includes:

(a) The number of special education students receiving special education and related services on December 1 of that school year;

(b) The number of special education students aged three through five who are receiving free, appropriate public education;

(c) The number of those special education students aged six through seventeen and eighteen through twenty-one within each disability category, as defined in the definition of "special education students"; and

(d) The number of those special education students aged three through twenty-one for each year of age (three, four, five, etc.).

(2) For the purpose of this part, a student's age is the student's actual age on the date of the child count: December 1.

(3) The state superintendent may not report a student under more than one disability category.

(4) If a special education student has more than one disability, the superintendent shall report that student in accordance with the following procedure:

(a) A student with deaf-blindness and not reported as having a developmental delay must be reported under the category "deaf-blindness."

(b) A student who has more than one disability (other than deaf-blindness or developmental delay) must be reported under the category "multiple disabilities."

(5) The office of the superintendent of public instruction shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of special education students receiving special education and related services on the dates in question.

(6) The office of the superintendent of public instruction will include in its report special education students who are enrolled in a school or program that is operated or supported by a public agency, and that:

(a) Provides them with both special education and related services; or

(b) Provides them only with special education if they do not need related services to assist them in benefiting from that special education.

(7) The superintendent may not include special education students in its reports who:

(a) Are not enrolled in a school or program operated or supported by a public agency;

(b) Are not provided special education that meets state standards;

(c) Are not provided with a related service that they need to assist them in benefiting from special education;

(d) Are counted by the state's lead agency for Part C services; or

(e) Are receiving special education funded solely by the federal government including students served by the U.S. Departments of the Interior or Education.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-510, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-510, filed 10/11/95, effective 11/11/95.]

WAC 392-172-511 Disproportionality. (1) The state shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the state with respect to:

(a) The identification of students as special education students, including the identification of students as special education students in accordance with a particular impairment described in this chapter; and

(b) The placement in particular educational settings of these students.

(2) In the case of a determination of significant disproportionality with respect to the identification of a student as a special education student, or the placement in particular educational settings of these students, the superintendent of public instruction shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of Part B of the IDEA.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-511, filed 12/1/99, effective 1/1/00.]

WAC 392-172-512 Audits. (1) The state auditor's office shall conduct fiscal/program audits of school district or other public agency special education programs. The purposes of such audits shall be:

(a) To determine compliance or noncompliance with:

(i) A school district and other public agency's application(s) for state and federal excess cost funds;

(ii) The provisions of this chapter; and

(iii) Any supplemental federal conditions to funding as may now or hereafter exist.

(b) To establish a factual basis for:

(i) The recovery of unlawfully received or expended state or federal special education funds; or

(ii) The initiation of fund withholding proceedings.

(2) The superintendent of public instruction shall comply with chapter 392-115 WAC in the resolution of all audits.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-512, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-512, filed 10/11/95, effective 11/11/95.]

WAC 392-172-514 Fund withholding. (1) In the event a school district or other public agency fails to submit an approvable corrective action plan required by chapter 392-115 WAC, audit resolution, or fails to submit an approvable corrective action plan pursuant to WAC 392-172-504, monitoring, or fails to comply with a corrective action plan approved pursuant to chapter 392-115 WAC or fails to comply with a corrective action plan pursuant to WAC 392-172-504, the superintendent or designee shall provide the school district or other public agency notice which complies with RCW 34.05.434 of:

(a) Intent to withhold a specified amount of state and/or federal special education funds; and

(b) The school district and other public agency's opportunity for a hearing before the superintendent of public instruction or designee prior to commencement of the withholding.

(2) Funds may be withheld in whole or part in the event the district or other public agency fails to request a hearing or the hearing decision upholds the final audit or monitoring in whole or part. (RCW 28A.155.100.)

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-514, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-514, filed 10/11/95, effective 11/11/95.]

WAC 392-172-516 Recovery of funds. The superintendent of public instruction shall comply with the provisions of chapter 392-115 WAC in the event an audit conducted pursuant to WAC 392-172-512 indicates that a district or other public agency has unlawfully received and/or expended state or federal special education funds.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-516, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-516, filed 10/11/95, effective 11/11/95.]

WAC 392-172-518 Fund withholdings to enforce parent appeal decisions. The superintendent of public instruction or designee may withhold any amount of state funds and/or any amount of federal special education funds as deemed necessary to enforce a decision made on appeal pursuant to WAC 392-172-360 without any necessity of a further hearing on the matter.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-518, filed 10/11/95, effective 11/11/95.]

Private School Requirements

WAC 392-172-520 Implementation by state of special education students placed or referred by school districts or other public agencies. In implementing the private school provisions of WAC 392-172-219 through 392-172-226, the state shall:

(1) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(2) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a special education student;

(3) Provide an opportunity for those private schools and facilities to participate in the development and revision of state standards that apply to them; and

(4) Ensure that a special education student who is placed in or referred to a private school or facility by a school district or other public agency:

(a) Is provided special education and related services;

(i) In conformance with an IEP that meets the requirements of WAC 392-172-156 et seq.; and

(ii) At no cost to the parents;

(b) Is provided an education that meets the standards that apply to education provided by school districts and other public agencies, including the requirements of this chapter; and

(c) Has all of the rights of a special education student who is served by a school district or other public agency.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-520, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-520, filed 10/11/95, effective 11/11/95.]

WAC 392-172-522 Students in public or private institutions. The state shall make arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures) as may be necessary to ensure that the least restrictive environment provisions in this chapter are effectively implemented.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-522, filed 10/11/95, effective 11/11/95.]

WAC 392-172-524 Technical assistance training and monitoring activities. (1) The state shall carry out activities to ensure that staff members and administrators in all public agencies:

(a) Are fully informed about their responsibilities for implementing the least restrictive environment requirements; and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

(2) The state shall carry out activities to ensure that the least restrictive environment requirements are implemented by each public agency.

If there is evidence that a public agency delivers services in locations that are inconsistent with the least restrictive environment requirements, the state shall:

(a) Review the public agency's justification for its actions; and

(b) Assist in planning and implementing any necessary corrective action.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-524, filed 10/11/95, effective 11/11/95.]

WAC 392-172-526 State responsibility. The state shall ensure that to the extent consistent with their number and location in the state, provision is made for the participation of private school special education students in the program assisted or carried out under this chapter by providing them with special education and related services, in accordance with WAC 392-172-232 through 392-172-248.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-526, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-526, filed 10/11/95, effective 11/11/95.]

Comprehensive System of Personnel Development

WAC 392-172-550 Comprehensive system of personnel development. The superintendent of public instruction shall establish and implement procedures for developing and conducting a comprehensive system of personnel development that:

(1) Is consistent with the purposes of Part B of the Individuals with Disabilities Education Act and the Part C Program for Infants and Toddlers with Disabilities;

(2) Is designed to ensure an adequate supply of qualified special education, general education, and related services personnel;

(3) Meets the requirements of 34 CFR 300.381 and 300.382; and

(4) Is updated at least every five years.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-550, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-550, filed 10/11/95, effective 11/11/95.]

WAC 392-172-552 Definitions. The following definitions apply to this chapter:

(1) "Appropriate professional requirements in the state," means those entry level requirements that are based on the highest requirements in the state applicable to the profession or discipline in which a person is providing special education or related services and that establish suitable qualifications for personnel providing special education and related services under Part B of the IDEA to special education children and youth who are served by state, local, and private agencies;

(2) "Highest requirements in the state applicable to a specific profession or discipline," means the highest entry-level academic degree needed for any state-approved or recognized certification, licensing, or registration or other comparable requirements that apply to that profession or discipline;

(3) "Profession or discipline," means a specific occupational category that provides special education and related services to special education children and youth under Part B of the IDEA, has been established or designated by the state, and has a required scope of responsibility and degree of supervision, and is not limited to traditional occupational categories;

(4) "Qualified" means that a person, in accordance with the provisions contained in 34 CFR 300.136 of the Individuals with Disabilities Education Act and WAC 392-172-200, has met superintendent of public instruction approved or recognized certification, licensing, registration, or other comparable requirements for the profession or discipline in which the person is providing special education and related services; and

(5) "State-approved or state-recognized certification, licensing, registration, or other comparable requirements" means the requirements that the state legislature either has enacted or has authorized a state agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in the state.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-552, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-552, filed 10/11/95, effective 11/11/95.]

WAC 392-172-553 Adequate supply of qualified personnel. The office of superintendent of public instruction shall complete an analysis of state and local needs for professional development for personnel to serve special education students that includes, at a minimum:

(1) The number of personnel providing special education and related services; and

(2) Relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals with temporary certification), and on the extent of certification or retraining necessary to eliminate these shortages, that is based, to the maximum extent possible, on existing assessments of personnel needs.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-553, filed 12/1/99, effective 1/1/00.]

WAC 392-172-559 Improvement strategies. After conducting the analysis described in WAC 392-172-553, the office of superintendent of public instruction shall develop strategies to address the needs identified under WAC 392-172-553, and in accordance with federal requirements in 34 CFR 300.382.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-559, filed 12/1/99, effective 1/1/00.]

WAC 392-172-561 School district implementation of comprehensive system of personnel development. Each school district or other public agency shall have on file with the office of superintendent of public instruction information to demonstrate that:

(1) All personnel necessary to carry out Part B of the IDEA within the jurisdiction of the school district or other public agency are appropriately and adequately prepared consistent with WAC 392-172-550 et seq.; and

(2) To the extent the school district or other public agency determines appropriate, it shall contribute to and use the comprehensive system of personnel development of the state established under WAC 392-172-550 et seq.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-561, filed 12/1/99, effective 1/1/00.]

WAC 392-172-572 Personnel standards. In order to ensure that all personnel necessary to carry out the purposes of Part B the Individuals with Disabilities Education Act are appropriately and adequately prepared and trained, the superintendent of public instruction shall:

(1) Establish and maintain standards for personnel providing special education and related services; and

(2) Determine that all personnel providing special education and related services perform these functions under state-approved or state-recognized certification, licensure, or other comparable requirements that apply to the area in which the person is providing special education and related services.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-572, filed 10/11/95, effective 11/11/95.]

WAC 392-172-574 Professional standards review. The superintendent of public instruction, shall periodically review the professional requirements in the statutes necessary for the provision of special education and related services. This professional standards review must include the requirements of all statutes and the rules of all state agencies applicable to serving special education students, and shall include the standards of the superintendent of public instruction, the department of licensing, the division of vocational rehabilitation, the department of social and health services, and any other public agency responsible for the licensing or certification of personnel who provide special education or related services. In conducting this review, the superintendent of public instruction must:

(1) Determine the highest standards applicable to each profession or discipline based upon the most current information available to the superintendent of public instruction;

(2) Identify those professions or disciplines for which the highest requirements of the state apply;

(3) Identify those specific professions or disciplines for which the existing personnel standards for special education or related services, including standards for temporary or

emergency certification are not based on the highest requirement in the state applicable to that specific profession or discipline; and

(4) For those professions or disciplines for which the highest requirements of the state do not apply, detail the steps the superintendent of public instruction is taking (and the procedures for notifying public agencies and personnel of those steps and the time lines it has established) for the retraining or hiring of personnel that meet the appropriate professional requirements in the state of Washington. In determining the status of personnel standards for each applicable profession or discipline in the state (as defined in WAC 392-172-572), the superintendent of public instruction's review and determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing special education or related services, whether the applicable standards are consistent with the highest requirements in the state for that profession or discipline.

The results of the review conducted in accordance with the provision of this section shall be submitted to the state advisory council for special education. Supporting documentation must be maintained in the files of the superintendent of public instruction's special education section and must be available to the public.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-574, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-574, filed 10/11/95, effective 11/11/95.]

WAC 392-172-576 Personnel shortages—Requirement. Each school district or other public agency will make a good faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services. Where there are shortages of personnel that meet these qualifications, the school district or other public agency will make a good faith effort to recruit and hire the most qualified individuals available.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-576, filed 12/1/99, effective 1/1/00.]

Performance Goals and Indicators

WAC 392-172-57700 Performance goals and indicators. (1) The office of superintendent of public instruction shall establish goals for the performance of special education students that promote the purposes of the Individuals with Disabilities Education Act and are consistent, to the maximum extent appropriate, with the state's four learning goals and essential academic learning requirements for all students.

(2) In addition, the office of superintendent of public instruction shall establish performance indicators that shall be used to assess progress toward achieving those goals that at a minimum address the performance of special education students on assessments, dropout rates, and graduation rates.

(3) The office of superintendent of public instruction shall report to the U.S. Secretary of Education and the public every two years on the progress of the state and of special education students in the state toward meeting the goals established under this section. Based on its assessment of that progress, the office of superintendent of public instruction shall revise its state

improvement plan under subpart 1 of Part D of the IDEA as may be needed to improve its performance, if the state receives assistance under that subpart.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-57700, filed 12/1/99, effective 1/1/00.]

Participation in Assessments and Reporting Results

WAC 392-172-57800 Participation in assessments and reporting results. (1) The office of superintendent of public instruction shall file with the U.S. Secretary of Education information to demonstrate that special education students are included in general state and district-wide assessment programs, with appropriate accommodations and modifications in administration if necessary.

(2) As appropriate the office of superintendent of public instruction, school districts or other public agencies shall:

(a) Develop guidelines for the participation of special education students in alternate assessments for those students who cannot participate even with accommodations or modifications in state and district-wide assessment programs;

(b) Develop alternate assessments; and

(c) Begin not later than July 1, 2000, to conduct the alternate assessments.

(3) In implementing this section, the office of superintendent of public instruction shall make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled students, the following information:

(a) The number of special education students participating in:

(i) General assessments; and

(ii) Alternate assessments.

(b) The performance results of special education students:

(i) Participating in general assessments; and

(ii) On alternate assessments (not later than July 1, 2000,) if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual students.

(4) Reports to the public must include:

(a) Aggregated data that include the performance of special education students together with all other students; and

(b) Disaggregated data on the performance of special education students.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-57800, filed 12/1/99, effective 1/1/00.]

Suspension and Expulsion Rates

WAC 392-172-57900 Reporting on suspension and expulsion rates. (1) Annually, school districts or other public agencies shall report to the state on the rates of long-term suspensions and expulsions of special education students and nondisabled students for the preceding school year. The state shall examine this data to determine if significant discrepancies are occurring:

(a) Among school districts or other public agencies; or

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(b) Between nondisabled students and special education students within school districts or other public agencies.

(2) If discrepancies are occurring, the state shall review and if appropriate, require revisions in state, school district or other public agency policies, procedures, and practices to ensure compliance with Part B of the IDEA.

(3) Policies, procedures, and practices to be reviewed and, if appropriate, revised include:

(a) The development and implementation of individualized education programs;

(b) The use of behavioral interventions; and

(c) Procedural safeguards.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-57900, filed 12/1/99, effective 1/1/00.]

FUNDING PROCEDURES, STANDARDS

School District Eligibility

WAC 392-172-580 School district eligibility—Requirements. As a condition of receipt and expenditure of federal special education funds, a school district or other public agency shall annually submit a request for federal funds to the superintendent of public instruction, and conduct its special education and related services program in compliance with the school district and other public agency's state approved plan. The request shall be made on forms developed and distributed by the superintendent. Request forms shall include, but not be limited to, the following assurance(s) and types of information:

(1) Assurance that:

(a) The school district or other public agency is in compliance with the provisions of this chapter and the rules implementing Part B of Individuals with Disabilities Education Act (34 CFR 300.1 et seq.) that may supplement this chapter, including procedural safeguards;

(b) The district or other public agency shall remain in compliance with this chapter and any such supplemental rules for the entire school year; and

(c) The funds applied for shall be expended in compliance with the request, this chapter, and any such supplemental federal rules, including excess cost, nonsupplanting, and comparable services;

(2) The information and assurances required by 34 CFR 300.220 through 34 CFR 300.250 and any other pertinent federal rules;

(3) Identification of the local district or other public agency designee responsible for child identification activities and confidentiality of information;

(4) A description of the policies, procedures and/or activities to be implemented or continued to provide for:

(a) Identification, location and evaluation (child find) of special education students including students in private schools;

(b) Confidentiality of personally identifiable information;

(c) Implementation of a system for personnel development;

(d) Involvement of parents of special education students, including the participation of non-English speaking parents;

(e) Participation of special education students with students without disabilities;

(f) Delivery of services to special education students in the least restrictive environment;

(g) Development of individualized education programs for each eligible special education student;

(h) Availability of career development and vocational education programs for special education students;

(i) A description of the numbers and types of special education students receiving special education and related services by placement option within the school district and other public agency's continuum of alternative placements;

(j) A goal and detailed timetable for providing full educational opportunity to all special education students, aged birth through twenty-one;

(k) Transition of students from Part C to preschool programs;

(l) Private school students;

(m) Performance goals and indicators;

(n) Participation in assessments and reporting results;

(o) Suspension and expulsion; and

(p) A description of the use of funds received under Part B of the Individuals with Disabilities Education Act (34 CFR 300.1 et seq.).

(5) Any other pertinent information requested by the superintendent of public instruction which is necessary for the management of the special education program.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-580, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-580, filed 10/11/95, effective 11/11/95.]

WAC 392-172-582 Collaborative requests. The superintendent of public instruction may require districts to submit a collaborative request for payments under Part B of the Individuals with Disabilities Education Act if it is determined that a single district or other public agency would be disapproved because the district or other public agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of special education students. Districts that apply for Part B funds in a collaborative request must meet the same minimum requirements as a single district or other public agency applicant. The request must be signed by the superintendent of each participating school district or other public agency. The districts are jointly responsible for implementing programs receiving payments under Part B of the Individuals with Disabilities Education Act. The total amount of funds made available to the affected school districts or other public agencies shall be equal to the sum each would have received separately.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-582, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-582, filed 10/11/95, effective 11/11/95.]

WAC 392-172-583 Exception for prior policies and procedures. If a school district or other public agency has on file with the office of superintendent of public instruction polices and procedures that demonstrate that the school district or other public agency meets any requirement under WAC 392-172-580, including any policies and procedures filed under Part B of the IDEA as in effect before June 4, 1997, the office of superintendent of public instruction shall consider the school district or other public agency to have met the requirement for purposes of receiving Part B funds.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-583, filed 12/1/99, effective 1/1/00.]

WAC 392-172-584 Review and amendment process. (1) Requests for Part B funding shall be submitted to the office of superintendent of public instruction for review by program supervisors using state checklist and for final approval by the superintendent's designee.

(2) Prior to making a final decision on a request for Part B funding, office of superintendent of public instruction staff shall consider any decision resulting from a hearing under WAC 392-172-350 that is adverse to the district or other public agency involved in the decision.

(3) If a district or other public agency makes a significant amendment to its policies and procedures, the district or other public agency must follow the same steps it took for submitting its original request. The review and approval process shall be the same as that used for an initial request for funds under Part B of the Individuals with Disabilities Education Act.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-584, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-584, filed 10/11/95, effective 11/11/95.]

WAC 392-172-585 Amendments to policies and procedures. (1) Policies and procedures submitted by a school district or other public agency, in accordance with WAC 392-172-580, shall remain in effect until a school district or other public agency submits to the office of superintendent of public instruction modifications that a district or agency decides are necessary.

(2) The office of superintendent of public instruction may require a school district or other public agency to modify its policies and procedures, but only to the extent necessary to ensure a district's or agency's compliance with Part B of the IDEA, if:

(a) After June 4, 1997, the provisions of the IDEA or its implementing regulations are amended;

(b) There is a new interpretation of the IDEA by federal or state courts; or

(c) There is an official finding of noncompliance with federal or state law or regulations.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-585, filed 12/1/99, effective 1/1/00.]

WAC 392-172-586 Notification of grant award. The superintendent of public instruction shall notify a district or other public agency in writing of:

(1) The amount of the grant under Part B of the Individuals with Disabilities Education Act;

(2) The period during which the district or other public agency may obligate the Part B funds; and

(3) The federal requirements that apply to the grant.

[Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-586, filed 10/11/95, effective 11/11/95.]

WAC 392-172-588 Availability of information and public participation. Each district or other public agency shall:

(1) Make policies and procedures, any evaluations, periodic program plans, and reports relating to the Part B program available for public inspection; and

(2) Provide reasonable opportunities for the participation by teachers, parents of special education students, families, other interested agencies, organizations, and individuals in the planning for and operation of the Individuals with Disabilities Education Act Part B program as an integral part of the overall school program; and

(3) At a minimum, a school district and other public agency's procedures must describe the steps taken to:

(a) Make policies and procedures and any required evaluations, plans, and reports available to the public; and

(b) Involve the required constituency groups, as noted above, in the planning and operation of the Part B program. Parental participation in the individualized education program process does not constitute involvement in the planning and operation of the program.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-588, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-588, filed 10/11/95, effective 11/11/95.]

WAC 392-172-590 Denial of requests—Opportunity for hearing. (1) In the event the superintendent of public instruction or designee proposes to deny, in whole or part, the request of a district or other public agency for federal special education funds, the district or other public agency shall be provided notice pursuant to RCW 34.05.434 of:

(a) Intent to deny the request of the district or other public agency; and

(b) The school district and other public agency's opportunity for a hearing before the superintendent of public instruction or designee prior to a denial of the request.

(2) The superintendent of public instruction shall provide an opportunity for a hearing before the office of superintendent of public instruction disapproves the request in accordance with the following procedures:

(a) The applicant shall request the hearing within thirty days of the action of the superintendent of public instruction.

(b) Within thirty days after it receives a request, the superintendent of public instruction shall hold a hearing on the record and shall review its action.

(c) No later than ten days after the hearing the office of superintendent of public instruction shall issue its written ruling, including findings of fact and reasons for the ruling. If supported by substantial evidence, findings of fact by the superintendent of public instruction are final.

(3) If the office of superintendent of public instruction determines that its action was contrary to state or federal statutes or regulations that govern the applicable program, the action shall be rescinded.

(4) If the superintendent of public instruction does not rescind its final action after a review, the applicant may appeal to the United States Secretary of Education. The applicant shall file a notice of the appeal with the United States Secretary of Education within twenty days after the applicant has been notified by the superintendent of public instruction of the results of the agency's review.

(5) The superintendent of public instruction shall make available at reasonable times and places to each applicant all records pertaining to any review or appeal an applicant is pursuing

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under this section, including records of other applicants.

(6) The school district and other public agency's request may be denied, in whole or part, if the district or other public agency fails to request a hearing or the hearing decision upholds the proposed basis for denial.

(7) Any school district or other public agency in receipt of a notice described in this section shall, by means of a public notice, take the measures necessary to bring a pending action pursuant to this section to the attention of the public within its jurisdiction.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-590, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-590, filed 10/11/95, effective 11/11/95.]

WAC 392-172-595 Records related to grant funds. (1) The superintendent of public instruction and districts shall keep records that show:

(a) The amount of funds under the grant;
(b) How the funds were used;
(c) The total cost of the project;
(d) The share of that cost provided from other sources; and
(e) Other records to facilitate an effective audit.

(2) Records shall be maintained to show program compliance, including records related to the location, evaluation and placement of special education students and the development and implementation of individualized education programs. Program and fiscal information records shall be available to authorized representatives of the office of superintendent of public instruction for the purpose of compliance monitoring under WAC 392-172-504 or auditing under WAC 392-172-512.

(3) Records shall be retained for five years after completion of the activities for which grant funds were used.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-595, filed 12/1/99, effective 1/1/00.]

School District Use of Funds

WAC 392-172-600 School district or other public agency use of amounts. The school district or other public agency must have on file with the state information to demonstrate that amounts provided under Part B of the IDEA:

(1) Will be expended in accordance with the applicable provisions of this chapter;

(2) Will be used only to pay the excess costs of providing special education and related services to special education students, consistent with this chapter; and

(3) Will be used to supplement state, local and other federal funds and not to supplant those funds.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-600, filed 12/1/99, effective 1/1/00.]

WAC 392-172-605 School district or other public agency use of federal funds for preschool children. In general, federal Part B funds are to be used for eligible special education students birth through twenty-one years of age. Federal preschool funds under section 619 may only be used for eligible special education children aged three through five years.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-605, filed 12/1/99, effective 1/1/00.]

WAC 392-172-610 School district or other public agency maintenance of effort. (1) Except as provided under WAC 392-172-615 and 392-172-620, funds provided to school districts or other public agencies under Part B of the IDEA may not be used to reduce the level of expenditures for the education of special education students made by it from local funds below the level of those expenditures for the preceding fiscal year.

(2) Except as provided in subsection (3) of this section, the office of superintendent of public instruction determines that a school district complies with this section for purposes of establishing the school district's eligibility for an award for a fiscal year if the district budgets, for the education of special education students, at least the same total or per-capita amount from either of the following sources as the district spent for that purpose from the same source for the most recent prior year for which information is available:

(a) Local funds only.

(b) The combination of state and local funds.

(3) A district that relies on subsection (2)(a) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of special education students in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in:

(a) The most recent fiscal year for which information is available, if that year is, or is before, the first fiscal year beginning on or after July 1, 1997; or

(b) If later, the most recent fiscal year for which information is available and the standard in subsection (2)(a) of this section was used to establish its compliance with this section.

(4) The office of superintendent of public instruction may not consider any expenditures made from funds provided by the federal government for which the office of superintendent of public instruction is required to account to the federal government or for which the district is required to account to the federal government directly or through the office of superintendent of public instruction in determining a district's compliance with the requirement of this section.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-610, filed 12/1/99, effective 1/1/00.]

WAC 392-172-615 School district or other public agency exceptions to maintenance of effort. A school district or other public agency may reduce the level of expenditures made by it under Part B of the IDEA below the level of those expenditures for the preceding fiscal year if the reduction is attributable to:

(1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, who are replaced by qualified, lower-salaried staff;

(2) A decrease in the enrollment of special education students;

(3) The termination of the obligation of the district or agency, consistent with this chapter, to provide a program of special education to a particular special education student that is an exceptionally costly program as determined by the state, because the student:

(a) Has left the jurisdiction of the district or agency;

(b) Has reached the age at which the obligation of the district or agency to provide a free appropriate public education to the student has terminated; or

(c) No longer needs the program of special education.

(4) The termination of costly expenditures for long-term purchases such as the acquisition of equipment or the construction of school facilities.

(5) In order for a school district to invoke the exception in subsection (1) of this section, the district must ensure that those voluntary retirements or resignations and replacements are in full conformity with:

(a) Existing school board policies in the agency;

(b) The applicable collective bargaining agreement in effect at that time; and

(c) Applicable state statutes.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-615, filed 12/1/99, effective 1/1/00.]

WAC 392-172-620 School district or other public agency—Treatment of federal funds in certain fiscal years. (1) For any fiscal year in which the total of federal funds available for IDEA-B exceeds $4.1 billion dollars, a school district or other public agency may treat as local funds up to twenty percent of the amount of funds it receives under Part B of the IDEA that exceeds the amount it received under Part B of the IDEA for the previous fiscal year. The requirements regarding supplanting and maintenance of effort do not apply with respect to the amount that may be treated as local funds under this section.

(2) If the state determines that a school district or other public agency is not meeting the requirements of this chapter, the state may prohibit the district or agency from treating funds received under Part B of the IDEA as local funds under this section for any fiscal year, but only if it is authorized to do so by the state constitution or a state statute.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-620, filed 12/1/99, effective 1/1/00.]

WAC 392-172-625 School-wide programs under Title I of the ESEA. (1) A school district or other agency may use funds received under Part B of the IDEA for any fiscal year to carry out a school-wide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount used in any school-wide program may not exceed:

(a) The amount received by the district or agency under Part B for that fiscal year; divided by the number of special education students in the jurisdiction; multiplied by

(b) The number of special education students participating in the school-wide program.

(2) The funds described in subsection (1) of this section may be used without regard to WAC 392-172-600(1).

(3) The funds described in subsection (1) of this section must be considered as federal Part B funds for purposes of calculating excess cost and supplanting.

(4) Except as provided in subsections (2) and (3) of this section, all other requirements of Part B must be met, including ensuring that special education students in school-wide program schools:

(a) Receive services in accordance with a properly developed IEP; and

(b) Are afforded all of the rights and services guaranteed to special education students under the IDEA.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-625, filed 12/1/99, effective 1/1/00.]

WAC 392-172-630 School district or other public agency permissive use of funds. (1) Funds provided to a school district or other public agency under the IDEA-B may be used for the costs of special education and related services and supplementary aids and services provided in a general class or other education related setting to a special education student in accordance with the individualized education program of the student, even if one or more nondisabled students benefit from these services; and/or

(2) To develop and implement a fully integrated and coordinated services system in accordance with WAC 392-172-635.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-630, filed 12/1/99, effective 1/1/00.]

WAC 392-172-635 School district or other public agency coordinated services system. (1) A school district or other public agency may use not more than five percent of the amount the district or agency receives under Part B of the IDEA for any fiscal year, in combination with other amounts (which must include amounts other than education funds), to develop and implement a coordinated services system designed to improve results for students and families, including special education students and their families.

(2) In implementing a coordinated services system under this section, a school district or other public agency may carry out activities that include:

(a) Improving the effectiveness and efficiency of service delivery, including developing strategies that promote accountability for results;

(b) Service coordination and case management that facilitate the linkage of individualized education programs under Part B of the IDEA and individualized family services plans under Part C of the IDEA with individualized service plans under multiple federal and state programs, such as Title I of the Rehabilitation Act of 1973 (vocational rehabilitation), Title XIX of the Social Security Act (Medicaid) and Title XVI of the Social Security Act (supplementary security income);

(c) Developing and implementing interagency financing strategies for the provision of education, health, mental health, and social services, including transition services and related services under the IDEA; and

(d) Interagency personnel development for individuals working on coordinated services.

(3) If a school district or other public agency is carrying out a coordinated services project under Title XI of the Elementary and Secondary Education Act of 1965 and a coordinated project under Part B of the IDEA in the same schools, the district or agency shall use the amounts under this section in accordance with the requirements of that title.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-635, filed 12/1/99, effective 1/1/00.]

School-Based Improvement Plan

WAC 392-172-640 School-based improvement plan. (1) The state may grant authority to a school district or other public agency to permit a public school (through a school-based standing panel) to design, implement, and evaluate a school-based improvement plan for a period not to exceed three years.

(2) A school district or other public agency may use Part B funds to permit a public school within its jurisdiction to implement a school-based improvement plan. The plan must be consistent with the purposes described in section 651(b) of the IDEA (state program improvement grants). These purposes include reforming and improving state systems for providing educational, early intervention, and transitional services. The systems involved include professional development, technical assistance, and the dissemination of knowledge about best practices to improve results for students with disabilities.

(3) The plan must be designed to improve results for all special education students and, as appropriate, for other students consistent with WAC 392-172-630.

(4) If the state grants the authority to a school district or other public agency to develop a plan, the district or agency must have the sole responsibility of oversight of all activities relating to the design, implementation, and evaluation of any school-based improvement plan that a public school is permitted to design under this section.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-640, filed 12/1/99, effective 1/1/00.]

WAC 392-172-645 Plan requirements. (1) A school-based improvement plan described in WAC 392-172-640 is for those students who attend the school for which the plan is designed and implemented.

(2) The plan must:

(a) Be designed, evaluated, and as appropriate, implemented by a school-based standing panel established in accordance with WAC 392-172-650;

(b) Include goals and measurable indicators to assess the progress of the public school in meeting these goals; and

(c) Ensure that all special education students receive the services described in their individualized education programs.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-645, filed 12/1/99, effective 1/1/00.]

WAC 392-172-650 School district responsibilities. A school district or other public agency that is granted authority under WAC 392-172-640 to develop a plan shall:

(1) Select each school under the jurisdiction of the district or agency that is eligible to design, implement, and evaluate the plan;

(2) Require each school selected in accordance with criteria established by the district or agency to establish a school-based standing panel to carry out the duties described in WAC 392-172-645;

(3) Establish:

(a) Criteria that must be used by the district or agency in the selection of an eligible school;

(b) Criteria that must be used by an eligible public school in the establishment of a school-based standing panel to carry out the duties described in WAC 392-172-645 that ensure that the membership of the panel reflects the diversity of the community in which the public school is located and includes, at a minimum:

(i) Parents of special education students who attend a public school, including parents of special education students from unserved and underserved populations, as appropriate;

(ii) Special education and general education teachers of public schools;

(iii) Special education and general education administrators, or the designee of those administrators, of those public schools; and

(iv) Related services providers who are responsible for providing services to the special education students who attend those public schools.

(c) Criteria that must be used by the district or agency with respect to the distribution of funds under Part B of the IDEA to carry out this section.

(4) Disseminate the criteria to local school district personnel and local parent organizations within the jurisdiction of the district or agency;

(5) Require a public school that desires to design, implement, and evaluate a school-based improvement plan to submit an application at the time, in the manner and accompanied by the information, that the district or agency shall reasonably require; and

(6) Establish procedures for approval by the district or agency of a school-based improvement plan designed under Part B of the IDEA.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-650, filed 12/1/99, effective 1/1/00.]

WAC 392-172-655 Limitation. A school-based improvement plan may be submitted to a district or agency, for approval only if a consensus with respect to any matter relating to the design, implementation, or evaluation of the goals of the plan is reached by the school-based standing panel that designed the plan.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-655, filed 12/1/99, effective 1/1/00.]

WAC 392-172-660 Additional requirements. (1) In carrying out the requirements of WAC 392-172-640 et seq., a school district or other public agency shall ensure that the parents of special education students are involved in the design, evaluation, or if appropriate, implementation of school-based improvement plans in accordance with this section.

(2) A district or agency may approve a school-based improvement plan of a public school within its jurisdiction for a period of three years if:

(a) The approval is consistent with the policies, procedures, and practices established by the district or agency in accordance with WAC 392-172-640 et seq.; and

(b) A majority of the parents of students who are members of the school-based standing panel and a majority of other members of the school-based standing panel that designed the plan, agree in writing to the plan.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-660, filed 12/1/99, effective 1/1/00.]

WAC 392-172-665 Extension of plan. If a public school within the jurisdiction of a school district or other public agency meets the applicable requirements and criteria described in this section, at the expiration of the three-year approval period, the district or agency may approve a school-based improvement plan of the school for an additional three-year period.

[Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-665, filed 12/1/99, effective 1/1/00.]

November 23, 1999

TO: Interested Persons

FROM: Douglas Gill, Director, Special Education,
Office of Superintendent of Public Instruction

SUBJECT: Concise Explanatory Statement (RCW 34.05.325)

For Rules Proposed as WSR 99-17-101, published September 1, 1999

WAC(s): Chapter 392-172 WAC

REASON FOR ADOPTION: Amendment of state regulations is necessary to align state regulations with the federal regulations that implement IDEA 97. Additionally we reviewed state regulations for clarity and necessity.

WERE CHANGES MADE SINCE THE RULE WAS PROPOSED? (check one)

☐ The text being adopted does not differ from the text of the proposed rule.

☐ The text being adopted contains only editorial changes from the proposed rule.

X The text of the adopted rule varies from the text of the proposed rule. The changes (other than editing changes) follow:

Changes were made in response to over 150 written and oral comments. We made changes in response to the comments in order to 1) increase use of federal language when possible; 2) clarify federal intent where necessary; 3) clarify state procedures when necessary; 4) give flexibility to local districts to develop procedures where state procedures were unnecessary; and 4) further clarify readability.

The WAC section citation appears first in the table below. The use of numbers addresses the comment(s) received. It is not a subsection citation.

SUMMARY OF COMMENT RECEIVED	THE AGENCY CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
GENERAL COMMENTS: 1. Replace regular education with general education. 2. Throughout WAC's, it appears related services are required when special education is provided. Please clarify to reflect related	1. Changes made: Replaced "regular" with "general" when referring to education, teachers and classrooms, as appropriate. 2. Changes made: Clarified that any necessary related services are provided to an eligible special education student in the appropriate sections of the regulations. Related services required when they allow a student to benefit from specially designed instruction.

services are provided when necessary 3. Propose you move to a more non-categorical approach. 4. Use federal language when possible. 5. You use five digit numbers in-between three digit numbers. 6. You did not address services to special education students in adult correctional facilities.	3. Changes made: Retained specific eligibility and assessment requirements for developmental disability and specific learning disability categories. The federal regulations require procedures for these two categories. Removed specific assessment requirements in all other eligibility categories and referred to the evaluation procedures at WAC's 392-172-106 through 392-172-111. Including specific eligibility criteria in each category was necessary when the legislature used a categorical funding model for special education. But it may have led districts and parents to believe these were the only assessments necessary for eligibility determination. In fact, all areas of suspected disability need to be address in the evaluation process to ensure an appropriate education program that is unique to the student's needs. See specific comments contained in each specific eligibility category section of the regulations. 4. Changes made: When appropriate, followed federal language. However, the state is required to develop procedures that supplement federal regulations. Changes are addressed at the specific WAC sections. 5. *No change made*. There were not enough unused numbers reserved in the 1995 regulations. Code reviser rules do not allow reuse of numbers that are repealed. but do allow use of 5 digit numbers. We could have either adopted the regulations using a new chapter or stayed with the existing chapter, adding 5 digit numbers. Using the existing chapter allows persons reviewing the regulations to see the changes. 6. Services to students in adult correctional facilities is addressed at RCW 28A.190.020, 28A.155.090(7) and chapter 28A.193 RCW. The State Supreme Court is determining the constitutionality of the state statute and the state's obligation to provide educational services in adult correctional facilities. Regulations will be developed after the decision. *Other*: a) Revised headings in appropriate sections to more accurately reflect content. b) Some comments addressed regulations not proposed for amendment. We made no changes to these sections. c) Made housekeeping clean up changes for clarity.
392-172-010 Use of federal authority appreciated.	Change made: Added federal statutory authority citation to this section.
392-172-020 1. Why was compliance eliminated from (1)(e)?	1. *No change made*. subsection (1)(e) reflects federal language. Compliance is addressed throughout the regulations.

392-172-030	
1. Need to add "for more than 10 days" to subsection (1) of the student rights section.	1. *No change made*. Even though a student might not receive services in the first 10 days of suspension, suspensions do not affect eligibility, and the student remains an eligible special education student.
2. Use of accommodations and modifications in this section confusing. Don't see it in federal language.	2. Change made: Deleted "modifications" from subsection (4)(a).
3. Clarify what: "advancing from grade to grade" means.	3. *No change made*. This is new federal language. Some students may have a disability that adversely affects educational performance, and need specially designed instruction, even though they receive passing grades. Districts need to develop child find procedures that assist in the proper identification of these students.
4. Change provision so all students exit on 21st birthday.	4. *No change made*. This is consistent with state law.
5. Change provision in (1) to "if a student's third birthday occurs at the end of the school year."	5. *No change made*. This is a federal requirement.
6. a. Don't just say IEP team, specify parents are members. b. Why distinguish between the evaluation group and team. Use team throughout. c. Concerned about use of both professional and parent. Do both have to agree?	6. No *change made*. The statutory language in IDEA and the corresponding federal regulations at 34 CFR Part 300, clearly increase parent involvement in the identification, evaluation, educational placement and the provision of FAPE. This increase in parental involvement is reflected in the terminology used to describe this evolving role (i.e. consent, notice and participation in the referral process, part of the group that determines eligibility as part of the evaluation, and membership on the IEP team.) The evaluation group consists of qualified professionals, selected by the school district. When determining eligibility for specific learning disability, the group is expanded to include the parent, and general education providers (See exact requirements at WAC 392-172-108(2).) Parents must be included in a review of evaluation data and are part of the group determining eligibility. However, the IEP team is not formed until after a student is determined eligible. Parents do not have to agree with the conclusions reached as a result of an evaluation, nor do they have to agree with all other members of an IEP team. Schools must always use parental input in determining in what areas to assess a student, and parents are part of the group that determines eligibility. And while the IEP team should always attempt to work to consensus, the district has the ultimate responsibility to identify, evaluate and offer FAPE to an eligible student. When parents disagree, with a school district's proposal or refusal of services, parents have the right to seek resolution through, mediation, citizen's complaints and/ or due process.
7. Clarify what is needed to graduate.	7. *No change made*. Schools develop their own promotion and graduation requirements consistent with state board requirements and with appropriate modifications or accommodations for students with disabilities, including special education students. The

	procedures established by the state board are at WAC 180-51-115.
392-172-035 1. What does adversely mean? 2. a. Burdensome to require that foster parents be trained as surrogates. We've allowed foster parents to act as parents. Is this consistent with federal law? b. While consistent with IDEA, will require training to districts. 3. Add student's developmental or educational performance to (2)(a). More appropriate for infants and toddlers.	1. *No change made*. Adverse impact is historical federal and state language. In this context, we believe it means a negative or harmful effect. 2. Change made: Clarified in subsection (5) that foster parents may be appointed as a surrogate, but the state child welfare agency can not. 34 CFR 300.20 gave states the option to allow foster parents to act as parents if not prohibited by state law, and if parent's rights were extinguished. The use of a person acting in the place of a parent must be consistent with 34 CFR 300.515 (WAC 392-172-308). This requires appointment of a surrogate when the child is a "ward" of the state. In this state, parents do not lose the right to make educational decisions on behalf of their child until either a disposition order is entered in a dependency action, or parental rights are terminated. Many parents of children placed in foster care, still have the right to make educational decisions on behalf of their children. Some placements are voluntary, and some placements are pending an investigation for the need for a dependency action. When the court does make a finding of dependency, a disposition order is entered. In Washington, the state, not the foster parent is awarded the custody of the dependent child unless there is entry of a dependency guardianship. OSPI recognizes the need for additional training in this area. 3. *No change made*. Developmental performance for infants and toddlers should be addressed by regulations for the Part C program, administered by DSHS, which is the lead agency for Part C. *Other*: Moved old 392-172-055(2) to 392-172-035(3). This statement more appropriately addresses eligible special education students.
392-172-040 1. a. Definitions of evaluation and reevaluation unclear, missing nature and extent of services. Suggest federal language. b. Where is authority establishing requirements for both eligibility and need. Do we reestablish eligibility every time we reevaluate? 2. a. Remove current from title. Like removal of currency. b. Don't remove currency requirements. 3. Explain school process when consent is revoked.	1. Change made: Added language in (1)(c) to address the nature and extent of services consistent with federal language. Authority for addressing evaluation and reevaluation is at 34 CFR 300.500(b)(2) and 300.536. Reevaluation is for the purpose of confirming continuing eligibility and for the purpose of confirming the appropriateness of the services. See also: Comment #2, this section. 2. Change made: Removed current from title. The definition of current evaluation was not restored. The new regulations regarding reevaluation make clear that if no new testing is necessary to establish continuing eligibility, the student does not need to be retested. The evaluation group makes the determination of needed

4. Add definition of day and native language.	assessments. 3. *No change made.* The regulations explain that consent is not retroactive. If a parent revokes consent prior to a school conducting an activity for which consent is needed, the school will have to obtain consent through mediation, or ask a hearing officer to override the refusal through a due process hearing. 4. Changes made: Added definitions of day and native language as new subsections (4) and (5).
392-172-045 1. a. Don't believe prevention of speech problems should be part of definition of special education. b. Like OT in this section, expand definition of OT. c. Like retention of Behavioral Instruction. d. Believe related services as special education confusing. Perhaps these should be in both sections. Concerned those activities that may be special education are not also allowed to be a related service. e. Federal language only adds travel training and vocational training. 2. a. Concerned about loss of supervision specificity with old "174" plan. Add "school personnel trained in area of disability. Add supervision on a monthly basis. b. believe commitment of resources language is vague, and words "will be clear" will increase litigation. 3. Definition of specially designed instruction helpful. 4. Use of accommodations and modifications confusing. 5. Concerned this section dictates the PE curriculum. Not all schools teach aquatics.	1. Changes made: a. Added a statement to subsection (3) that services are considered special education if they are provided as specially designed instruction and they are related services when they are provided to enable a student to benefit from special education. b. Removed "prevention" from the definitions of speech and language services, and occupational therapy. c. Incorporated federal language in the definition of occupational therapy. Discussion: This state has historically included speech, occupational and physical therapy, behavior, audiological services, and mobility and orientation in its definition of special education. The federal language recognizes that states vary in their treatment of various services, and allows states to identify certain related services as special education, rather than a related service if it is provided as specially designed instruction. Federal regulations also specifically recognize that transition services might be provided as specially designed instruction or a related service, and further state that the related services list is not exhaustive. Once a student is determined to need specially designed instruction, the IEP team, through information obtained in the evaluation process, best determines the whether a specific service is special education or a related service. 2. Change made: Amended (4)(a)(iii) to "needs of the student and services provided to the student" are clear to parents and IEP providers. Did not change proposed language regarding specific supervision standards. The standards are best developed through district procedures. Level of supervision may depend on both the student's and the provider's situation. The IEP should clearly address the needs of and services to the student. 3. *No change made.* 4. Change made: Removed "modifications" from subsection (2). 5. *No change made.* The language regarding physical education is federal language. The IEP team determines the student's individual needs for physical education, if

	provided as specially designed instruction. *Other*: The list of special education definitions is alphabetized.
392-172-055 1. Like OT/PT as special education but concerned no longer a related service. If PT is special education, how do we account for consultation with parents and other teachers. Recommend list of related services match federal. 2. Unclear what is a student with a disability, versus a student needing a related service. What if student only needs a related service. How is that funded? 3. Counseling services need defining. Do social services in the schools require a professional certified ESA social worker? We can't find authority for classified staff services as related services. Focus on services not the professional. 4. Please add reference to nursing delegation act in nursing services definition. 5. School personnel have not been specifically trained to evaluate the counseling needs of parents and receive no funds to contract with others to do so. What skills do we have to help parents acquire?	1. Change made: Added "preventative" services to the definition of related services. See also, response to comment #1., WAC 392-172-045. Services listed as special education, in WAC 392-172-045(2) may be related services if they are not provided as specially designed instruction, but are provided to enable a student to benefit from special education. The list of related services is not exhaustive. 2. *No change made*. In order to be eligible for special education, a student must have a disability that adversely affects educational performance, and must need specially designed instruction. If a student does not need specially designed instruction, but only needs a related service. the student is not a special education student. Special education funding is tied to a student's eligibility for special education. If a student who is not eligible for special education needs supportive services, those services would be paid for through basic education moneys or other funding, but the student would not receive special education dollars in addition to the basic education dollars allocated to all students. 3. Changes made: Amended the definition of subsection (2) (j) to be consistent with federal language. No other changes to counseling services. The list of related services, including counseling, is examples of services that could be provided to a student if necessary to assist the student to benefit from special education. Classified staff qualifications are found at WAC 392-172-200. Federal citations are at 34 CFR 300.382 and 300.136. 4. *No change made*. This provides examples of nursing services. All professionals, including nursing staff are subject to other laws regarding their profession. 5. *No change made*. Federal regulations included these as examples of related services. The need for a particular service is determined through the evaluation process and identified on the IEP by the IEP team.
392-172-065 1. Add reference to least restrictive environment. 2. How are aids and supports different from related services. We continue to confuse aids, services and modifications.	1. Added cross-reference to WAC 392-172-172. 2. *No change made*. This regulation is consistent with the federal definition and is specific to supports to a student in the general classroom or extra curricular activities. In other words, accommodations, supplemental aids and supports would enable the student to benefit from general education, and related services enable the student to benefit from special

	education.
392-172-070 and 073. 1. Like the split of assistive technology devise from the service. 2. Like the parent training component.	*No change made.*
392-172-100 1.Like the addition of the systematic intervention based plan. Would like to see option expanded 2. Change childfind to child find. 3. Why is child find required for children 0-21 when services are required 3-21? 4. Appear to require more for migrant and homeless children. What grade do we use for determining deficits. 5. Replace "may" with "shall in subsection (3).	1. *No change made.* 2. Change made: Made suggested change throughout. 3. *No change made.* Federal regulations make clear that public agencies have a child find obligation from birth through 21 years even if they do not serve students until age 3. While not all schools participate in part C programs, coordination with other public agencies in the screening and identification is necessary. In this state, the Part C lead agency for 0 to 3 is the Department of Social and Health Services. 4. *No change made.* IDEA 97 added additional language regarding childfind that included highly mobile children and children advancing from grade to grade. Districts are to develop their own policies for child find activities, which may vary from district to district. See also comment WAC 392-172-030 #3. 5. No change. See comment #4. The list of activities provides examples. Districts develop their own policies that will enable them to locate students with disabilities, who may be eligible for special education.
392-172-102 and 104 1. Replace "referral" with request for evaluation. 2. a. Although the referral requirements are more than federal language, it gives schools needed minimal guidance. b. The timelines for referrals need to be shortened. Schools have too much time. c. Don't have any timelines if the federal regulations don't require it. d. you have collapsed the timelines for evaluations and IEP's. e. There continues to be no timeline for giving parents notice of the referral itself. 3. The referral is to certificated staff. This conflicts with federal language allowing parents to make a referral to school personnel. 4. a. The use of wording regarding "parental input" could imply the	1. Change made: Changed WAC 392-172-104 to "referral procedures". These two regulations are not "requests for evaluations." They are procedures to allow a school to be notified of a student who may be in need of special education services. 2. Changes made: Removed old subsection (3) so that the timelines for evaluation and IEP meetings are not collapsed, added a reference to WAC 392-172-156 in the new subsection (3). Also clarified that the 35 school day timeline begins after consent to evaluate is obtained. Added language to ensure timelines for determining whether to evaluate are triggered by the receipt of the referral. Discussion: Comments to this section ranged from questioning the need for any timeline to requesting that the timelines be changed. The timelines are state standards, developed prior to these proposed changes. While the federal regulations do not set specific timelines, the regulations require state to develop policies and procedures to implement their regulations. 3. Changes made: a) WAC 392-172-102: Required the referral to be in writing, unless the individual making the referral is unable make the referral in writing. b) WAC 392-172-104: Allowed the referral to be made to school

parent does not have direct involvement in the decision to assess. b. You are involving parents too early in the process.	personnel. Discussion: The new federal regulations have implemented protections under discipline for children who have not yet been determined eligible, if the parents notified school personnel, in writing (unless unable to write), that they suspected their child was in need of special education services. This change makes the referral process consistent with the process outlined in the discipline section. 4. Change made: Moved the location of "with parental input" to make clear that parents are involved in this process. Both the amendments to IDEA and the comments to the federal regulations make clear that parents have increased involvement in the identification, evaluation, placement and provision of FAPE to their children. The discussion of 34 CFR 300.501 (parent participation) located on page 12606 of the March 12 Federal Register states, "The statute specifically states that parents have the right to participate in meetings regarding identification, evaluation, placement or FAPE.
392-172-105 1. Please redraft (4) and (5) to reflect that the district can not ensure participation beyond reasonable efforts. 2.Is it appropriate to use the language, "reasonable efforts" if requirements are stricter under other federal law? 3. a. Federal rules specify that parents "of a child with a disability" must be afforded rights. Add this, don't think parents have rights before a student is determined eligible. b. Add parents have the right to be part of the MDT meeting.	1. Changes made: removed subsections 4 and 5 from this section. Parent involvement in placement decisions is addressed in WAC 392-172-15705. 2. See comment #1. The language in WAC 392-172-15705 states that public agencies must take "whatever action is necessary", consistent with other federal law. 3. *No changes made:* to subsection's (1)-(3). See discussions in WAC 392-172-104, comment # 4 and WAC 392-172-030, comment #6. This regulation addresses parent involvement in meetings. Participation in the evaluation process is addressed in the evaluation procedures in 392-172-106 through 111.
392-172-106 1.Why were career, vocational and need for transition services removed from the areas of evaluation. 2. Words, "but not limited to" need to be added back in. 3. What is meant by "not commonly linked to the disability."	1.and 2. *No change made.* This language parallels federal language. The evaluation address all areas of suspected disability and must be sufficiently comprehensive to address special education and related services needs the evaluation group determines is necessary, including career, vocational, and transition services. 3. The determination of what is necessary to evaluate a student will be particular to a student, regardless of the disability category.
392-172-107 1. Is the use of both the terms	1. Changes made: Renumbered this section as a new section, 10900. Added federal language regarding

"group" and "team" necessary? Don't use the word group, team implies working together, group does not. 2. Delete "current" from 1(b). 3. Add a (d) the educational needs of the student, to subsection (2). 4. Evaluation is defined, but assessment is not.	review of the data. Discussion: We reviewed the federal language and the federal comments regarding parental involvement in evaluations. The federal language makes a distinction between parental involvement in evaluation procedures and parental involvement in the determination of the need for additional evaluation data and involvement as an IEP team member. After a school district or other public agency has conducted tests, or other assessments of a student, the agency needs to review the data with the parent to determine whether any additional data is necessary. We believe this accurately reflects the increasing involvement of a parent and moving the section after WAC 392-172-108 is consistent with the federal positioning of the section. 2) *No change made.* Federal regulations use the term "current classroom-based assessments and observations" when determining needed evaluation data. 3. *No change made.* Subsection (2)(b) addresses this. 4. *No change made.* Evaluation is a process that includes individual assessments, and determination of eligibility. *Other:* Added language, consistent with federal language, that this group could conduct the review without out a meeting. If the review is done as a meeting, parents need to be included.
392-172-108 1. Where's the individual report. 2. Add recent evaluations completed by other appropriate professionals to subsection (3). 3. The words, tool, test, procedure and instrument are used at various points through the section. Unless all terms are distinct, use one. 4. Subsection (9) refers to speaking skills. Suggest you substitute word "communication" for speaking. 5. a. Suggest the following wording change for subsection "shall be made by the parent and a group of qualified professionals in subsection (5) b. Why isn't the special education teacher included in the list. 7. Add language that says the schools can't skip testing someone who is difficult to test. 8. Doesn't use of professional	1. Change made: New subsection (14) was amended to include the documentation of determination of eligibility. See further comments at WAC 392-172-109 (now numbered WAC 392-172-10905) that address the report and the documentation of determination of eligibility. 2. *No change made.* Subsection (3) does not exclude any information available about the student that would further the evaluation process. 3. Change made. Added "evaluation" materials to subsection (5). Federal language uses these terms interchangeably. It is assumed that the evaluation processes may include more than testing, depending on the student. 4. *No change made.* Federal language specifically uses "speaking skills" in this context, while elsewhere they use communication. We believe they intended to specifically address "speaking skills" here. Given requirements to fully evaluate students, communication skills will also need to be assessed, when necessary. 5. Changes made: Defined evaluation group in subsection 2(a). Defined additional evaluation group members for students with specific learning disabilities in subsection 2(b). 7. *No change made.* The evaluation group determines

judgement in subsection (7) contradict with 109 (4).	the necessary assessments. This includes evaluations conducted by non-school personnel, if necessary. 8. *No change made*. Use of professional judgment applies to a determination of test validity and availability and whether determinations regarding eligibility can be made. Other: 2. Deleted WAC 392-172-112 (medical evaluations) and moved the text to this section as new subsection (13). This addresses evaluations and is more appropriately located here. 2. Substituted "special education needs, related services needs and placement" for "programming" in subsection (5).
WAC 392-172-109 1. Don't see a requirement to make recommendations as to services needed, including ESY. 2.This implies that each member who contributed to the evaluation must write separate reports. Federal language does not imply this. Clarify that the contents of the evaluation may include the individual reports of each team member. Federal regulations only mention a separate written report for students with learning disability. 3. How does one ensure information is carefully considered. 4. Strengthen this section so it is clear parents are at the meeting and should be included in the creation of the report and documentation of determination of eligibility. 5. It does not seem that subsection(2) should belong here. Isn't it more appropriately a definition of what is a special education student? 6.Requiring a date and signature may open opportunities for compliance citations. 7. Requirement for separate written report in case of disagreement may imply the team need not reach agreement.	This section has been renumbered 392-172-10905. 1. Change made: Added language clarifying that the evaluation report must be sufficiently comprehensive to address the necessary requirements for an IEP. 2. Changes made: Moved the criteria documenting eligibility from subsection (2) to (5). The other elements address the evaluation report.. Discussion: Federal regulations require an evaluation report and documentation of the determination of eligibility for all special education students. See 34 CFR 300.534. The requirements for contents of the report are specific for students with learning disabilities, but not specific for the other eligibility categories. At 34 CFR 300.126, the state is required to develop evaluation procedures and at 34 CFR 300.530 public agencies are to develop procedures for implementing the state requirements. 3. *No change made*. The process of considering the information could be reflected in the evaluation report, if information was considered, but not used as a basis for the eligibility determination. 4. *No change made* to general section regarding reports. Change made to subsection (4) addressing students with specific learning disabilities. See WAC 392-172-030, comment #6 and WAC 392-172-104, comment #4. Parents participate in providing information at referral, which is the basis for determining needed evaluation procedures. Parents are part of the evaluation group for determining if a student has a specific learning disability. When assessing students in other disability categories, the public agency performs the assessments, using outside assessments if necessary. Persons conducting assessments document the findings of their individual assessments, which will provide a basis for the report. The school district then needs to involve the parents in determining whether any additional data is necessary. Parents are part of the group that determines eligibility. See WAC 392-172-111.

	5. Change made. Placed subsections (2) and (3) before development of the report, new (3). These first two subsections address factors to be considered in developing a report and will be part of the basis for determining eligibility. 6. *No change made.* It is appropriate to date and sign the evaluation report. 7. Change made: Changed "attach" a statement to "include" a statement in subsection (f). Added references to requirements in WAC 392-172-132, for students with specific learning disabilities. The group may not reach agreement on all issues, from eligibility to need for services. It is the obligation of the public agency to reconcile any variances, in making determinations about eligibility and services. If the parent disagrees, they may request mediation or a due process hearing, or file a citizen's complaint. .
WAC 392-172-111 1. Clarify how to proceed if parents aren't there. Suggest clarifying language in (1) and (3). It appears as though decisions are made without parental involvement for students who are not eligible. 2. Use parent in one section and parent and guardian in another. 3. No federal requirement for 10 days.	1.Change made: Added references to WAC's 392-172-105 and 15705, so that methods used to ensure parent participation is addressed. Parents always receive a copy of the evaluation report and documentation of determination of eligibility, regardless of the eligibility determination, or regardless of whether they are able to participate. 2. Change made: deleted "or legal guardian" for this section. Parents are defined in WAC 392-172-030 and include guardians, others acting in the place of the parent and appointed surrogate parents. 3. *No change made.* The 10-day notification requirement is a state procedure.
WAC 392-172-112 1. (1)(b) refers to school district criteria. Suggest the state establish criteria. Clarify it's the evaluation group, not just the IEP team.	Changes made: Moved this section to WAC 392-172-108. Clarified that the evaluation group makes the determination. It is appropriate for the public agency to develop criteria that may be unique to qualifications and geographic location.
WAC 392-172-114 1. Continue both fine and gross motor development as two separate domains. 2.Continue option of 1.5 deviation for children beyond age 5. 3. Make 2 standard deviation option mandatory at age 6. 4.What happens when a child moves from one district using this category, to another district which does not. 5. Shouldn't allow districts the option deciding whether to use this	1.No change. Federal language now defines fine and gross motor skills as physical developments. In WAC 392-172-116 the definition includes fine motor, gross motor, or both. 2. and 3. *No change made.* There was support for keeping the criteria for 6 to 9 consistent with 3 to 6. There were also concerns that this would unnecessarily increase the number of students eligible for special education. We have left the option to school districts to determine through their procedures whether to automatically reevaluate at age 6, or whether to reevaluate 3 years after the previous evaluation, if that occurred later than age 3. We will appoint a task force to further study the expansion of the disability category and

category. If do, make sure option is only for those students 6 to 9. 6.Make sure schools can use any other category, if it fits. 7. Why no reevaluation at age 9? 8. Appears that students who are eligible for special education always need related services.	the eligibility criteria. 4. *No change made.* Intrastate transfer students should be assumed eligible based on the eligibility determination of the prior school district. The IEP should be implemented as closely as possible and the district should determine whether reevaluation is necessary. 5. Change made: Amended subsection (9) to clarify that school district option is for students 3 to 9. The change is consistent with the federal regulations. 6. Changes made: Added new subsection (7) to clarify that school districts may always use any other eligibility category even if they elect to use the developmental disability category in their district. Amended subsection (3) to clarify that reevaluation at age 3 is necessary for continued eligibility within this category. (Reevaluation at age 3 would not be required for a student determined eligible within another category, until 3 years after the initial evaluation.) 7. *No change made.* Subsection (4)(a) addresses this. 8. Change made: See comment 2 in the general comments. *Other:* Removed the language regarding procedural safeguards in subsection (4), as this protection is always available to any student who is reevaluated and determined ineligible for special education services.
WAC 392-172-118 1. a. Use of term, emotionally disturbed" harmful to children and parents. Suggest, neurologically impaired. b. Glad to see the word "seriously" removed. Like the term "emotional/behavioral disability." 2. Add relationships with peers, teachers, or other adults in(1)(b). 3. Why was (4)(d) eliminated. It is critical that a qualified mental health professional is used. Why was the clinical mental health evaluation no longer allowed.	1. *No change made.* Although the federal language uses the term, "emotional disturbance", we adopted the term, "emotional/behavioral disability." 2. *No change made.* The definition parallels federal language. 3. Change made: Deleted subsection (4)(a) through (d). Added the following language: *"All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through WAC 392-172-111."* See general comment #3. Many commenters suggested that we move to a non-categorical approach when determining eligibility. The old criteria were developed when funding was based on categories. The federal regulations define eligibility categories, and require that evaluations be conducted in accordance with the evaluation procedures. Keeping the specific eligibility requirements required the evaluation team to perform specific assessments whether or not needed, and did not address the need to look at all areas of suspected disability or all special education service needs. The new federal language in WAC sections 392-172-106 through 111 increase parental involvement in

	evaluations and emphasize the need for evaluations that are not solely based on a category. Which tests, assessments, or other evaluation procedures are necessary, is dependent on the individual student characteristics, and determined by the evaluation group, with involvement by the parent.
WAC 392-172-120 1. a. Using the current age score criteria creates statistically flawed method for identification. Use a standard score deviation. b. The current criteria are out-dated and flawed. 2. This is the only category that recommends referral if other conditions are suspected. Isn't this true of all categories. 3. You use the term to define the term.	1. Change made: Deleted evaluation criteria beginning at subsection (1). Added cross-reference to WAC's 392-172-106 through 111. See: general comment and response,#3, and WAC 392-172-118, comment #3. It is more appropriate for the evaluation group to determine what assessments are necessary, and for public agencies to implement testing criteria. 2. Change made: See comment #1. 3. Change made: Included the term, speech and language impairment in the definition, consistent with federal language.
WAC 392-172-122 1. See general comment #3	1. Change made: Deleted specific evaluation criteria in subsections (1) through (3). See: general comment and response, #3, and WAC 392-172-118, #3.
WAC 392-172-124 1. Reconsider wording the opening paragraph. It appears you are limiting health impairments to the list. Why give examples of health problems, since diagnosis of health problems is the "bottom line. 2. See also general comment #3.	1. *No change made*. The list and description of health problems follows the federal definition. The examples of health problems are preceded by the words "such as" and are not intended to be limiting. 2. Change made: Deleted specific evaluation criteria in subsections (1) and (2). Added cross-reference to WAC's 392-172-106 through 111. See: general comment and response, #3, and WAC 392-172-118, #3.
WAC 392-172-126 1. Define "imperfect ability"	1. *No change made* to the federal definition. Other: Added subsection (3) cross-referencing the evaluation criteria in WAC's 392-172-106 through 111.
WAC 392-172-128 1. Need a lead in sentence defining the group. 2. Clarify subsection (1): "the student does not achieve commensurate with his or her age and ability levels." 3. This implies that we might assess a five year old as learning disabled. There are no standards.	1. Change made : Added reference to WAC 392-172-108 (2)(b). 2. *No change made*. This is old language, previously contained in WAC 392-172-126. The language has not changed. For learning disabilities, the evaluation group must look at both a student's age and ability level. Ability level may not be the same as the chronological age, if the student started school at a later age, or was retained. 3. *No change made*. Federal language made clear that a child might be determined to be learning disabled prior to first grade. Absent specific standards, the group may use the criteria in WAC 392-172-108. 3. Other: Combined subsection (8) (c) and (d).
WAC 392-172-132 1. a. Addition of the age-grade	1. Change made: Deleted subsection (2) (d). Comments were mixed regarding this addition. Removed language

based norms in (2)(d) is a bad idea, and will result in students with learning disabilities not being assessed. b. Like addition of age and grade based norms. It is inappropriate to test on something a student does not know. c. Define which grade. d. What is significant about this. 2. We need to work as a group on the discrepancy tables.	at this time, but see WAC 392-172-128(1) and comment #2, addressing this. 2. No change necessary. It is appropriate for a state-wide task force to reexamine current discrepancy tables. 3. Other: Clarified language regarding the evaluation group and procedures in new subsection (3), consistent with federal language.
WAC 392-172-134 1. Suggest replacing "full scale intellectual ability" for "intelligence quotient." 2. Definition states concurrent deficits in general intellectual function and adaptive behavior, but there is only criteria given for the IQ. Add more assessment requirements to address this.	1. and 2. Changes made: Deleted specific evaluation criteria beginning at subsections (1) and (2). Added cross-reference to WAC's 392-172-106 through 111. See: general comment and response, #3, and WAC 392-172-118, #3.
WAC 392-172-136 1. a. As parent of a child with multiple disabilities, definition and eligibility criteria are confusing. b. Replace concomitant with "two or more."	1. Changes made: Added adverse effect on educational performance in subsection (1). Deleted subsection (2). Added cross-reference to WAC's 392-172-106 through 111. Did not change the federal definition. Use of this category was more critical when eligibility by disability affected funding. In this category as any category, the evaluation group needs to evaluate all areas of suspected disability and all areas of adverse educational impact to determine special education services.
WAC 392-172-138 1. See general comments #3.	1. Changes made: Maintained federal definition. Deleted specific evaluation criteria in subsections (1) and (2). Added cross-reference to WAC's 392-172-106 through 111. See: general comment and response, #3, and WAC 392-172-118, #3
WAC 392-172-140 1. Add definitions of unilateral hearing loss and high frequency hearing loss. 2. Need to add "and requires specially designed instruction."	1. Changes made: Did not add definitions for unilateral or high frequency hearing loss. Maintained federal definition. Deleted specific evaluation criteria. Added cross-reference to WAC's 392-172-106 through 111. See: general comment and response, #3, and WAC 392-172-118, #3. 2. Change made: Added requested language.
WAC 392-172-142 1. Add degenerative eye conditions and visual field disorders as eligible disorders. 2. Should not have removed requirement for current visual impairment.	1. *No change made.* Kept federal language definition. The conditions addressed would not necessarily exclude degenerative conditions or visual field disorders if they had an adverse impact on educational performance and required specially designed instruction. 2. and 3.Changes made: Deleted specific evaluation criteria in subsections (1) and (2). Added cross

3. Need to add qualified optometrist or ophthalmologist. 4. Feel requirement of 20/70 not accurate reflection of a visual impairment. Look at functional vision, not corrected vision. 5. Add evaluation criteria addressing potential need for Braille, since it is required to develop an IEP. 6. Nothing in these criteria addresses adapting the testing for vision impairments.	reference to WAC's 392-172-106 through 111. See: general comment and response, #3, and WAC 392-172-188, #3. The evaluation group determines necessary tests or assessments consistent with evaluation criterion in WAC's 392-172-106 through 111. 4. Change made: See comments #1, #2 and #3 in this section. 5. and 6. Change made: See comments #2 and #3. The evaluation criteria address the need for adapting tests if necessary. The requirements for an evaluation report in WAC 392-172-10905 addresses the requirement that information on the report be sufficiently comprehensive to develop and IEP. This would include the need for instruction in Braille.
WAC 392-172-144 1. Blindness in deaf/blindness should be blind. 2. Appreciate the substitution of the word "needs" for problems. 3. See general comment #3.	1. Change made: Changed "who are" to "with" deaf/blindness. 2. *No change made.* 3. Change made: Deleted specific evaluation criteria in subsections (1) through (3). Added cross-reference to WAC's 392-172-106 through 111. See: general comment and response, #3, and WAC 392-172-118, #3.
WAC 392-172-146 1. Opposed to the changed definition of autism, which deletes, "range of intellectual ability". 2.Add PDD is a spectrum disorder. 3. a. Define qualifications of persons doing evaluations. b. Don't eliminate vision and hearing screening. c. Add back in sensory processing. d. support elimination of "standardized measure of adaptive behavior. There are many professionally appropriate scales. e. Reinstate standardized testing. f. Don't take the OT assessment out. g. Suggest confirmation of autism by outside agency. h. don't eliminate fine and gross motor skill testing. i. Don't change criteria. Many are shuffled out of this category to avoid dealing with disciplinary issues.	1. *No change made.* This language parallels the federal language. It is true that students with autism have a range of intellectual ability. This is also true of all other eligibility categories. Each individual student with a suspected disability, regardless of category, must show a disability, adverse educational impact and need for specially designed instruction. 2. *No change made.* Kept language addressing pervasive developmental disorders. 3. Change made: Deleted specific evaluation criteria beginning with subsection (1). Added cross-reference to WAC's 392-172-106 through 111. See: general comment and response, #3, and WAC 392-172-118, #3. WAC 392-172-108 addresses qualification requirements for administering tests. The purpose of removing specific testing criteria in this and other eligibility categories does not minimize the need for testing in all areas of suspected disabilities. The evaluation group, with parental input, needs to determine what tests, assessments, medical evaluations or other procedures are necessary, not only to confirm a disability, but also to determine the scope of special education services needed by a student. The group may determine that some testing may need to be performed by an outside agency. Behavioral issues, if present, need to be addressed in the IEP, regardless of disability category.
392-172-148 1. Need to add, "and requires	1. Change made: Accepted comment. 2. Change made: Deleted specific evaluation criteria

specially designed instruction." 2. See: General comment, #3.	beginning with subsection (1). Added cross-reference to WAC's 392-172-106 through 111. See: general comment and response, #3, and WAC 392-172-118, #3.
392-172-150 1. a. Need to clarify days in subsection(5). b. Does section 5(b) require that that the IEE is completed in 15 days, or do you only intend for the district to take definitive action. c. There is not a 15 day requirement in federal language. d. Seems the way this is written, a parent can turn around and request a new IEE. e. Appreciate replication of federal language. 2. Recommend language in (7) requiring a parent to express in writing why they object to a district's evaluation. 3. Concerned that no weight is given to parent's individual evaluations when publicly paid for. All IEE's need to be considered, whether paid publicly or privately. 4. Is it intended that the district may choose to not consider an evaluation because it fails to meet the district's criteria, and if so, what does "agency criteria" mean?	1. Change made: Clarified in (5) that the agency must respond to the parent's request within 15 days by allowing the parent to proceed with an IEE if the parent uses evaluators that meet public agency criteria, or by initiating a hearing. A parent's right to request an independent evaluation at public expense occurs after an agency has conducted an evaluation. See subsection (4). The state standard has been to define the timeline for school districts response to a request. We believe this is minimal guidance and avoids further due process requests over timeliness of responses. Federal regulations allow states to set standards for timelines in their procedures. 2. *No change made*. This subsection, adopted from federal language states that while a public agency may ask for the parent's reasons, they may not require the parent to give them reasons. 3. Change made: (8) Added that IEE's, publicly or privately paid for, must be considered if they meet public agency criteria. 4. *No change made*. The language regarding public agency criteria is federal language. Subsection (8) requires the school district or public agency to consider evaluations that meet criteria. Any IEE, publicly or privately paid for, may be considered at a due process hearing, even if it does not meet agency criteria. Additionally, (5)(b) allows a school district to ask for a hearing to deny public payment if it determines that a parent is not using an evaluator who meets agency criteria. While the language does not mandate that school districts consider evaluations that do not meet agency criteria, they are required in other parts of this chapter to consider to all information provided by a parent regarding a student. School districts and other public agencies should have procedures that define criteria for qualified evaluators. The criteria can not be more stringent than criteria for agency evaluations. The federal language also allows public agencies to address the location of the evaluators. *Other:* Clarified in subsection (1) that the right to an independent evaluation occurs after the evaluation process.
392-172-153 1. Need to clarify who is general education teacher for a preschool student.	1. Change made: added "preschool education provider" to subsection (2). 2. *No change made*. Parent's or school districts have discretion to ask individuals who have knowledge or

2. a. Like subsection (2). Hope it truly involves the general education teacher in the process. b. Add a rule to subsection (6) preventing district attorneys from attending IEP meetings. 3. This should state that parents are equal members of the team. 4. Need to add "authorized to commit" resources.	special expertise regarding the student. While most IEP meetings do not include the parent's or school district's counsel, the comments to the federal regulations make clear that either the parent or school district may invite others they determine are appropriate. 3. *No change made.* Federal language does not add this clarification. While team members may disagree, it is ultimately the school district's or public agency's obligation to offer an appropriate program. Parents may use mediation or due process when there is disagreement over the services or any other provision of FAPE. 4. *No change made.* Federal language uses the language currently in the regulations. This does not relieve the school district or other public agency from providing services that address the unique needs of the student, at no cost to the parents.
392-172-156 1. Align timelines with 392-172-104. 2. Like removal of unnecessary language.	1. Change made: Clarified that the IEP meeting occurs after the student is determined eligible. See also comments at 392-172-104. 2. Change made: Amended "once a year" to annually".
392-172-15700 1. Don't' like the wording, "convince" parents. Too derogatory. Use enlist, or secure. 2. a. Believe school districts should have to use all methods listed, not be selective. b. How are districts to avoid harassment lawsuits if they have to contact parents at work. 3. Remove "to the extent appropriate" in subsection (6).	1. *No change made.* Comments to federal regulations included this request. No change to the federal regulations made in response to this request. 2. *No change made:* Districts need to develop procedures to implement parent notification. Communication with the parent might include a question regarding the best method employed for notification. The list addressing notification attempts contains examples that a school district or other public agency might use to notify parents. It would not be appropriate to contact a parent at work, if the parent disagreed with this method. 3. *No change* in response to this comment. If the student is not or will not be participating in general education environment, the general education teacher need not attend. Added "preschool provider." *Other*: Included language in subsection's (2) and (5), and the heading that addresses other meetings with parents, consistent with 392-172-105.
392-172-15705 1. a. See comment (1) at 392-172-105. b. If a placement decision is made without parent involvement, how does that work.	1. Change made: Added "afforded the opportunity to be" members, to subsection (1). Federal regulations address parent involvement in one regulation. This state addresses parts of involvement in several regulations. This addition is consistent with federal intent. Parents consent is required before initial placement. Districts need to use the methods described in 392-172-15700 to ensure involvement. If the parents cannot attend, the district should use alternative means to assure

	involvement, if they will not attend or do not respond to district invitation, the attempts must be documented.
392-172-158 1. Change IEP's are "accessible to" to "provided to." 2. Whose responsibility is it to inform all teachers. 3. Define supports in (3)(b). 4. Prefer old language characterizing immediacy of implementation and believe it gives guidance.	1. and 2. *No change made.* This is federal language. School districts need to determine how to implement this provision in a way that ensures both access and information regarding responsibilities and requirements in subsection's (1) and (2). 3. *No change made.* IEP's may contain accommodations in the classroom, modifications to the curriculum or other physical classroom modifications, auxiliary aids, assistive technology and related services for the student and supports, if any, for the provider. Providers need to know the specifics of a student's program to be implemented by them. Specific supports to the provider need to be addressed on the IEP. 4. *No change made.* Where possible, we used federal language. Unreasonable delay implementing an IEP could result in corrective action to a district or other public agency through a citizen's complaint or due process hearing.
392-172-160 1. A statement should be added requiring school to state if no transition services are needed and why. 2. Need full disclosure of who is providing service. 3. Define supports. 4. Use "18," not age of majority. 5.What are appropriate activities in 1(a)(ii). 6. Add "objectively measured" to (1)(g)(i). 7. a. Like inclusion of behavioral interventions. b. Statement re: positive interventions attempted prior to use of aversive therapy, seems out of context here.	1.*No change made.* This is addressed in (h) and (i). 2. *No change made.* Needs of the student and services to the student are also addressed at 392-172-045(4). 3. See 392-172-158, comment #3. This is specific to the individual student's IEP, and might include training for the provider. 4. Made suggested change. 5. *No change made.* This is a determination by the IEP team. 6. *No change made.* Concerns about objectivity need to be addressed by the IEP team, or by parents through other methods of resolution, if necessary. 7. *No change made.* Use of aversive interventions needs to be addressed on the IEP. Justification for use, showing positive intervention attempts also need to be addressed on the IEP. *Other*: Added cross reference to extended school year as new subsection (1)(m).
392-172-161	*Other*: Renumbered section to WAC 392-172-159. Development and review should come before the IEP.
392-172-162 1. Strengthen language requiring physical education. .	1. *No change made.* Subsection (1) is clear in its intent.
392-172-163 1. Not clear that ESY is on the IEP. 2. Add beyond school year "or day." 3. Include those receiving services from NPA's.	1. *No change made.* See change at 392-172-158 Added in 10905, requirement that the evaluation group provide enough information to address ESY needs. Additionally, all special education services provided to the student needs to be on the IEP. 2. *No change made.* Extended school year services are

	intended to address activities that occur beyond the normal school year. 3. *No change made.* Contract provisions with NPA's and other public agencies are located elsewhere. Services provided to a student through an NPA must address a student's individual needs.
392-172-166 1. Do not see parent listed in this section. While it may be inherent, it isn't clear.	Change made: Added "student participation" to the header. This section addresses additional program meeting elements. Parent participation in the IEP meeting is addressed at WAC 392-172-15700.
392-172-170 1. Appreciate adding mediation as option in this section.	1. Change made: Kept mediation, but moved to subsection 3(a). Mediation would be used as an option to obtain consent, not override consent. 2. *Other:* Removed duplicative language already contained in WAC's 392-172-302 and 304.
392-172-172 1. Add provision for least restrictive environment for 0 to 3 year olds.	Changes made: Added preschool students in first paragraph. Regulations regarding LRE for birth to three are best addressed in Part C regulations and through coordination with the Part C program.
392-172-174 1. Subsection 2(b) talks about use of resource room as a supplementary service. Can't specially designed instruction be provided there? 2. You need to add a reference to WAC392-172-045.	1. *No change made.* This regulation addresses the continuum of placements. It does not address which services are provided in a given location. Services in these areas should supplement, not replace the general education placement. 2. Change made: Made change at subsection (2)(a).
392-172-176 1. Like proviso that Part C programs arrange for transition.	1. *No change made.*
392-172-180 1. Suggest adding "unless the parents otherwise agree." to subsection (3).	1. Change made: Accepted comment. 2. Other: Amended wording in title and (4) from "setting" to "placement." This is consistent with federal law.
392-172-184	*Other:* Deleted this section. Moved content to WAC 392-172-185 as new subsection (1).
392-172-185 1. Believe permission should always be required of a parent before conducting a test. 2. Federal language does not require reevaluation more than once every three years. Don't require more.	1. *No change made.* This is aligned with general education procedures. 2. *No change made.* Federal language requires a reevaluation at a minimum of once every three years, or more often if conditions warrant. Parents are required to receive prior written notice of intent to conduct a reevaluation and they are required to give consent. It is appropriate to have consistent state procedures for both evaluations and reevaluations.
392-172-186 1 Like this section and the portion allowing review of existing data	1. Change made: *Added language cross-referencing meetings at subsection (3).* Other: Added cross reference to prior written notice at

without a meeting.	subsection (5).
392-172-188	*Other*: Corrected citations in first paragraph.
392-172-190 1. There is no ten day requirement in federal language.	1. This is a historical state procedure. In most cases parents are active participants and notice may be given at the meeting. In other cases, notification within 10 days is not an unreasonable time to notify parents of the results.
392-172-200 1. There should be specific language specifying standards required of special education directors. 2. Thank you for articulating the process for a pre-endorsement waiver. 3. Leave in qualifications for classified staff, and specify number that can be supervised. Former language had more teeth. 4. This better addresses some of the staffing issues.	1. *No change made.* Subsection (1) addresses requirements for all employees, paid in whole or part, with state or federal excess cost dollars. . 2. *No change made.* 3. Changes made: Added cross-reference to WAC 392-172-045 (4) addressing supervision. Also added reference to state law addressing classified staff. 4. Changes made: Moved the definition of "substantial profession training" to second sentence of subsection (2), which addresses teacher qualifications. Deleted discussion under certificated personnel that did not pertain to this class. Clarified in header that these sections apply to qualifications in order to use special education funding.
392-172-202 1. Increases required credits for emergency endorsement. Negatively impacts schools.	1. Change made: Removed additional requirements in subsection (2).
392-172-222 1. US Supreme Court case, Carter said NPA's, don't need to be approved if they confer FAPE to a child. Need to revise all standards regarding this.	1. *No change made.* The state is required to have procedures for service to students at NPA's. Additionally, the State of Washington has higher state constitutional requirements, prohibiting funding for special education funding to religious private schools. While a court might award reimbursement to a parent at a private school without state approval, this would occur on a case by case basis. 2. Other: Reworded subsection (1) for clarity.
392-172-231 1. Change (3)(a) to "and/or" can not write in English. Many of our parents are literate, but can't write in English.	1. Changes made. Accepted recommendation.
392-172-232 1. Use of "resident" does not add meaning. Not sure which students meet criteria. Need to clarify. This area is confusing.	1. Changes made: Clarified that these are students not full or part time enrolled in public schools. Added cross-reference to chapter 28A.225 RCW, clarifying that the students considered are those who reside within district boundaries.
392-172-23300 1. Not clear when count is to occur.	1. *No change made*: Federal regulations state that the district consults with appropriate representatives on how to conduct the count and that the count occurs

	December 1 of each year. Other: Removed subsection (3) from this section and placed it in WAC 392-172-23305(3).
392-172-23305	Other: See comment at WAC 392-172-23300
392-172-23600 1. Concerned about provision of services to private school students. 2. Who are "appropriate representatives of private school students." This doesn't give a lot of guidance. How can a private school have a genuine opportunity when schools make the final determination?	1. Change made: Added reference to WAC 392-172-232, defining eligible students. Students who attend private schools but enroll in public school part time, for special education services, would receive services pursuant to an IEP. Services to private school students, not enrolled in the school district are dependent on the determination by the school district, after consultation, to determine what services will be provided and who will receive the services. 2. *No change made*. School districts need to develop procedures to address this, based on their particular situation. They may want to receive input from parties regarding who is appropriate. The representatives might include private school administrators, parents, other providers, or others whom the school determines are appropriate. "Genuine opportunity" refers to the participation by others. The school district or other public agency makes the final decision.
392-172-23605 1. Like the service plan provision to private school students.	1. *No change made.*
392-172-23610 1. This, and previous section seem to spell out what is and is not required.	1. *No change made.*
392-172-300 1. This will save time and effort.	1. *No change made* in response to this comment. Other: Referenced additional federal regulations.
392-172-302 1. The stems of (1) and (2) are different. Is FAPE and educational placement the same as "delivery?"	1. Changes made: Modified language in subsection (1) to parallel federal language in response to this comment and others asking for use of federal language where possible.
392-172-304 1. Mediation is not used to override consent. 2. Parental permission should be required before any testing. 3. What is the meaning of this section?	1. Change made: Moved mediation to clarify that it can be used as a mechanism to obtain consent. 2. *No change made*. Federal language allows testing without permission if the test is given to all students, and consent is not required. This is not to be confused with the necessity of obtaining consent for evaluations. 3. This section addresses parental consent.
392-172-306 1. This section leads you to believe that parents receive a copy of procedural safeguards one time, yet WAC 392-172-307 spells out five times. 2. Clarify "native language" and	1. Change made: Amended subsection (1)(a) to clarify that if the district does not provide a copy with the notice, a means of obtaining a copy be addressed in the notice. 2. Change made: Added definition of native language in WAC 392-172-040(4). Did not make changes to the language regarding feasibility. Sources are available for translation of documents. Districts should consider

not feasible. 3. Who are acceptable sources in (1)(f).	documenting issues and alternative methods if they are unable to provide a document in a parent's native language. 3. *No change made*. The district should address acceptable sources in their procedures which could include, specific persons in the district, the state, or other public or private agencies the district knows has expertise in special education procedural protections.
392-172-307 1. There needs to be a state procedural safeguards document that is easily understandable.	1. *No change made*. The comment is acknowledged and the regulation requires that the notice be produced in language understandable to parents. 2. Other: Referenced the federal citation to the specific requirements to be addressed in the safeguards.
392-172-308 1. a. Substitute shall for may in subsection (7). b. Foster parents should be first in line to act as surrogates. c. Why should foster parents have to receive surrogate training? It's obvious they should substitute as a parent. 2. a. Clarification of the status of foster parents appreciated. It is still unclear whether case workers and DCFS workers may act as surrogates. b. It is not good to allow non-public agencies to be surrogates.	1. *No changes made* in response to this comment. Please see discussion at WAC 392-172-035 #2. School districts and other public agencies need to develop procedures for appointment and training of surrogate parents. Those procedures might include consideration of the length of time with a foster parent, stability and relationship. It is not appropriate to assume or dictate that the appointment of a foster parent as a surrogate is always the most appropriate appointment. The child's unique circumstances may make appointment of another person more appropriate. 2. Changes made: Clarified in 4(a) and (b) that persons employed by public agencies involved in the education or care of a child may not be appointed as a surrogate. This is consistent with federal law, which does not allow public agency personnel, including DCFS workers to be appointed as surrogate parents, but does allow non-public agency personnel to be appointed if they are involved in the care of a child, but not the education. 3. Other changes, Removed subheadings in subsections (3) and (4). Moved subsections(6) and (7) to subsection (4). Amended responsibilities in subsection (5) to parallel federal law.
392-172-310	*Other*. See comment #1, at 392-172-302. Amended third sentence to parallel federal law regarding disputes over identification, evaluation, education placement and provision of FAPE.
392-172-312 1. Concerned about the removal of the word "primary."	1. Change made: Reinserted primary. The parties are the parents and the school districts. Other participants may be at the mediation at the request of the parent or school district, provided that the parties agree. The mediator is responsible for assuring that the parties, not the participants are mediating, and reaching agreement. Parties are encouraged to approach mediation as a non-adversarial alternative to due process.
392-172-313	1. *No change made*. This section is new and addresses

1. Want to make sure mediators are trained. Too much time was spent at my mediation over cost of services.	training.
392-172-316 1. Change "may" to "shall" in subsection (2).	1. Change made: Added participants to subsection (2), given the change made in WAC 392-172-312.
392-172-317 1. If parents need to be trained about the benefits of mediation, school districts should too.	1. *No change made*. This section is new federal language, specific to parent education and optional on the part of a school district or other public agency.
392-172-324 1. Like the amendments to the citizen complaint sections.	1. *No change made*.
392-172-328 1. Would like ESD's to inform parents when they conduct in-service trainings.	1. *No change made*. This addresses the state's obligations.
392-172-332	Other: Clarified the contents to include requirement that the complaint be in writing and signed. Removed filing provisions addressed in WAC 392-172-334
392-172-334	Other: Clarified that complaints against the state should be filed at same location and added cross references to investigations concerning the state.
392-172-338 1. Why only provide school response to parent upon request. Why not just give it to them.	1. *No change made*. The school's response is made available to a complainant upon request. Not all complaints are generated by parents. Other: Clarified procedures for investigation and response to complaints.
392-172-348 1. Very positive step.	1. *No change made*.
392-172-350	Other: Made changes in subsection (1) to parallel federal language. Addressed contents of request in subsection (2) to parallel federal language in WAC 392-172-351. Amended (3) to require a district's documentation of a request for an IEE, since federal language does not require the request be written. 4. Clarified in (6) that the office of superintendent of public instruction provides notice of mediation.
392-172-351	Other: Clarified heading to reflect that this is a notice by a parent for a request for hearing. (1) Clarified that the request for hearing is to OSPI. (3) Clarified that while use of a model form is not required by a parent, failure to provide notice and include the areas addressed on the model form may result in a reduction of attorney fees.
392-172-356 1. Clarify days.	1. *No change made* to this section. Added a definition of days in WAC 392-172-040.
392-172-362. 1. The references in (3) (e) and (f)	1. Corrected references. 2. Removed reference to attorney fee provision for

are incorrect.	mediation, which was discretionary language, and not contained within state mediation regulations.
392-172-37500 1. While school personnel can order a change in placement, WAC 392-172-381 says the IEP team must determine the placement please clarify.	1. *No change made.* WAC 392-172-37500 addresses removals that are not considered a change of placement. WAC 392-172-381addresses interim alternative settings for removals for drug, weapons, or dangerous behavior. When a student is removed for drugs or weapon related behavior and placed in an interim alternative educational setting, the team determines the setting.
392-172-37505 1. Recommend adding consecutive before "ten" days. 2.Concerned parent doesn't have say here.	1. *No change made.* Educational services are required for any student removed for more than 10 days, whether consecutive or cumulative. 2. *No change made.* This is consistent with the amendments to IDEA and corresponding federal regulations.
392-172-37510 1. This says personnel orders the change, 392-172-381 says team determines setting. Clarify.	1. See response to comment #1, WAC 392-172-37500. While a school may order the change of placement for drugs or weapons, the team determines the setting, unless the school and parents otherwise agree. Other: Added "possesses a weapon", consistent with federal law change.
392-172-377 1. Add "that includes behavior," after assessment plan.	1. *No change made.* This section directly focuses assessment plans for behavior.
392-172-381 1. See comments at WAC's 392-172- 37500 and392-172-37510.	1. *No change made:* WAC 392-172-381 (1) and (2) addresses the criteria for interim alternative educational settings. When the setting is chosen for a student possessing weapons or drugs, the IEP team determines the setting.
392-172-38400 1. Isn't the hearing process intended to parallel the non-expedited hearing process.	1. Change made: Clarified that OSPI arranges for the hearing and contracts with OAH to conduct hearings in special education cases.
392-172-38410 1. The term "expedited manner" is ambiguous. Put undue hardship on assessment personnel. Recommend deletion.	1. *No change made:* This is this terminology used in federal regulation. The purpose is to determine eligibility status prior to the expedited hearing timeline.
392-172-38415 1. Again, the 45 days should be triggered by OSPI's receipt.	Change made: Made suggested correction in subsection (1).
392-172-392 Remove the word "oral" from (7) and "obviously" from (8).	Changes made: Made suggested corrections. Removed "and which does cause" from subsection (3)(f).
392-172-394 1. Address minimum room size. 2. Define close proximity. 3. Make clear that aversive therapy should not be used on	1. *No change made.* The IEP team must address all conditions if aversive interventions are warranted, including location. 2. Changes made: Amended (2)(d) and (3) (d) as follows: "shall remain in *visual or auditory range*. . ."

infants, toddlers, and preschoolers.	3. *No change made*: Part C regulations should address infants and toddlers. The use of any aversive interventions warrant close scrutiny, must be developed by the "IEP team" and should be justified only when the team determines that this intervention is appropriate.
392-172-396 1. Add training should be current within 3 years, to (7).	1. Change made: Added that the person permitted to use aversive interventions have "current" qualifications. Other: Made housekeeping changes for clarity.
392-172-398	*Other*: Removed this section. Parents, may use citizen's complaints, mediation, or due process for dispute resolution. Other persons, in addition to parents, may file a citizen's complaint.
392-172-400 1.Clarify FERPA requirements, records retention throughout these sections on educational records.	1. Changes made. Modified definition of educational records to parallel FERPA. See also comments at WAC 392-172-404.
392-172-402 1. See comment #1, WAC 392-172-400.	1. Changes made: Deleted native language definition. Provided cross-reference for native language and consent.
392-172-404 1. See comment #1, WAC 392-172-400.	1. Changes made: Clarified this section to specify the state's procedures as follows: a. Informed parent's that in addition to rights regarding educational records under this chapter, they also have rights applicable to all students under FERPA and state. b. Clarified that state publications are available in alternative languages and formats. c. Identified the state procedures for protection of personally identifiable information under this chapter. d. Identified the state process if it were to undertake any major identification, location or evaluation activity. Discussion: School districts already develop and follow procedures to comply with FERPA, and state law that apply to all students. It is not necessary to restate each of the federal requirements in the special education regulations, except to the extent that they are specific to special education.
392-172-406	*Other*: Revised (1) to parallel federal law regarding placement of the student and provision of FAPE.
392-172-408	*Other*: Made housekeeping change for clarity.
392-172-418 1. Add mediation option. 2. Not clear how parents completely remove information.	1. Change made: Revised "participating agency" to school district or other public agency. The right to a district hearing to amend a record is pursuant to FERPA and restated in the federal special education regulations. This is not a due process hearing pursuant to 392-172-350 et seq. 2. *No change made*. This describes a process for parents to contest information contained in educational records. If school district and parent do not agree that the disputed information is inaccurate or misleading, the parents have a right to a hearing.

392-172-420	*Other*: Clarified that the district or other public agency develops its own hearing procedures.
392-172-422 1. Clarify that districts may release education records to another district when the student transfers. See also comment #1, WAC 392-172-400.	1. Changes made: Clarified that releases without written consent of the parent, must fall within the exceptions outlined under FERPA. Specified the requirements for written consent. Discussion: Release to a transferring district is one of the exceptions not requiring consent under FERPA. However, there may be parent notification requirements, depending on the school district FERPA notice. These rules and exceptions are applicable to all students, not just special education students. OSPI will provide assistance through a Technical Assistance Paper.
392-172-424 1. See comment #1, WAC 392-172-400.	1. Change made: Clarified that persons collecting and using personally identifiable information should receive training on state law, federal law, and state and local procedures.
392-172-426 1. See comment #1, WAC 392-172-400.	1. Change made: Added reference to state law and procedures for school district records retention.
392-172-500 1. Why is a general education teacher on the SEAC committee.	1. *No change made*. Federal regulations include a general education teacher on the committee. Amendments to IDEA emphasized the alignment of basic education with general education, and general education teachers are critical partners with special education staff in the provision of special education services to students. Other: Removed subsection (4) to be consistent with federal regulation. The duties of the members are addressed in other portions of this section.
392-172-502	*Other*: Substituted "superintendent of public instruction" for "the state."
392-172-504	*Other*: (1)Specified monitoring schedule, consistent with state practice. (2) Clarified that these are the state procedures. (6) Corrected audit reference.
392-172-506 1. Add Educational Service Districts to (6).	1. Change made: Added educational service districts and other public agencies. Other: Clarified this section is the state's use and allocation of funds, and corrected the allocation so it is consistent with state law.
392-172-510 1. Clarify state's responsibility. 2. Department of Defense does not operate schools in this state.	1. The receipt of federal special education funds in each state is based on a validated child count (head count) conducted on or about December 1 of each year. The information submitted by each district or other public agency is collected by the state and forwarded to the Department of Education as the basis for funding in the following year. Child count information is validated by the State Auditor's Office on behalf of the federal government using the following criteria: The student counted for state or federal excess cost funding must: (a)

	be enrolled in the district; (b) have a current evaluation, (c) have a current IEP, and (d) receive special education and any necessary related services. 2. Removed this department from subsection (7)(e). *Other:* Changed "may" to "will in (6) and deleted (6)(c).
392-172-520 1. Is this referring to NPA's? 2. Private schools are to participate in development of these standards. A description of how and when that takes place would be appreciated.	1. Change made: Clarified in heading that this section applies to students referred to or placed in private schools and facilities by school districts or other public agencies. 2. *No change made.* Representatives of non-public agencies were involved in the taskforce groups developing these standards for the proposed regulations.
392-172-559 Add: enhance positive behavioral interventions.	1. Change made: Provided cross-reference to the federal citation, when outlines the requirements. This language is specific direction to the state, for reporting to the Department of Education.
392-172-576	Other: Clarified that this is the state policy.
392-172-57800 1. Clarify that students can participate on portions of the test.	1. *No change made.* This section addresses requirements for developing guidelines and an alternate testing format, and is not appropriate for inclusion in this section.
392-172-57900 1. What's standard for significant?	1. *No change made:* Establishment of a standard for significance requires development of baseline data, which should be available at the end of the 1999-2000 school year. Disproportional representation is likely to be a factor in the determination of significance.